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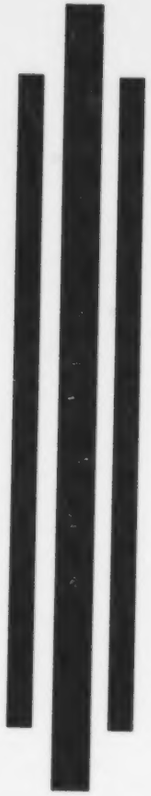
INDUSTRIAL RELATIONS LEGISLATION

in Canada

1990 EDITION

Canada



INDUSTRIAL RELATIONS LEGISLATION IN CANADA

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NOTE FROM THE EDITOR

This document is composed of two parts. In the first part, major industrial relations provisions existing in the various jurisdictions across Canada are summarized in tabular form. These notably include the provisions on certification of trade unions, government intervention during unsuccessful negotiations, prerequisites to legal strikes, strike votes, strike replacements, and legislation pertaining to the payment of union dues. The second part contains a narrative description of technological change legislation existing in certain jurisdictions.

The legislation studied in this report covers workers in general and does not include special statutory provisions often applying to workers in the construction industry and to employees in the public and parapublic sectors such as public servants, teachers, hospital workers, policemen and firefighters.

This document is not intended to be a substitute for the relevant statutes themselves. Users are reminded that it is prepared for convenience only and that, as such, it has no official sanction. Users are therefore advised to consult the texts of the statutes summarized in this document.

JURISDICTION OF THE FEDERAL GOVERNMENT AND THE PROVINCES

Under the Canadian constitution, labour legislation is primarily a provincial responsibility. The federal government, however, administers labour affairs in the following industries:

1) industries of an interprovincial or international character, such as railways, bus operations, trucking, pipelines, ferries, tunnels, bridges, canals and telegraph, telephone and cable systems;

2) all extra-provincial shipping and related services, such as longshoring;

3) air transport, aircraft and airports;

4) radio and television broadcasting;

5) banks;

6) works that have been declared by Parliament to be for the general advantage of Canada or of two or more provinces, such as grain elevators and uranium mining and processing; and

7) certain Federal Crown Corporations.

With respect to the Yukon and Northwest Territories, the Parliament of Canada has enacted legislation granting them the power to legislate on labour matters not coming under federal jurisdiction. As a result, the territorial governments have virtually the same legislative powers with regard to labour laws as the provinces. However, to date the Yukon and Northwest Territories have not adopted labour laws governing industrial relations in the private sector. For this reason, the applicable legislation in this field is the federal law, the Canada Labour Code (Part I).

MAJOR INDUSTRIAL RELATIONS PROVISIONS

(January 1, 1990)

TIMELINESS OF APPLICATION

No certified trade union, no agreement

At any time. s.24(2)(a)

Certified trade union but no agreement in force

After expiration of 12 months from the date of certification or, with the consent of the Board*, at any earlier time. s.24(2)(b)

Agreement in force (3 years or less)

During the last 3 months of operation. s.24(2)(c)

Agreement in force (more than 3 years)

During the 34th, 35th and 36th months of operation, and thereafter during the last three months of each year that the agreement continues to operate after the 3rd year of operation, or after the commencement of the last three months of operation. s.24(2)(d)

Where strike or lockout in effect

No application may be made during the first six months of a legal strike or lockout except with the consent of the Board. s.24(3)

Where application refused

No subsequent application from the same trade union for the same or substantially the same unit for six months unless the Board abridges that period. s.31(Regs.)

* The term "Board" means the Canada Labour Relations Board.

APPROPRIATE BARGAINING UNIT

"Unit" means a group of two or more employees. s.3(1)

The Board determines the unit that, in its opinion, is appropriate for collective bargaining and, for such purposes, it may include or exclude employees and decide any question as to whether a group of employees constitutes a unit. ss. 16(p), 27(1), (2)

Professional employees

The Board determines that the unit appropriate for collective bargaining is a unit consisting of only professional employees, unless it would not otherwise be appropriate. The Board may decide on the inclusion of employees of more than one profession and of those performing the functions but lacking the qualifications of a professional employee. s.27(3), (4)

Supervisory employees

The Board may determine the appropriateness of a unit comprising or including employees who supervise other employees. s.27(5)

Private constables

The Board shall not include a private constable in a unit with other employees. s.27(6)

Longshoring and other industries

The Board may determine that the employees of two or more employers in the longshoring industry, or in an industry in a geographic region designated by the Governor in Council upon its recommendation, constitute a unit appropriate for collective bargaining. s.34(1)

REPRESENTATION VOTE

The Board will certify a trade union if satisfied that a majority of the employees in the unit wish to have it represent them as their bargaining agent. s.28

For the purpose of satisfying itself as to the wishes of the employees, the Board may order that a representation vote be taken. s.29(1)

A vote is ordered by the Board where a trade union applies for certification as the bargaining agent for a unit in respect of which no other trade union is the bargaining agent, and the Board is satisfied that not less than 35% and not more than 50% of the employees in the unit are members of the trade union. s.29(2)

Representation votes ordered by the Board are conducted under its supervision, and it determines the employees that are eligible to vote. s.30(1)

Results are determined on the basis of the ballots cast by the majority of employees voting. s.31(1)

If less than 35% of the eligible employees actually vote, the representation vote is void. s.31(2)

DECERTIFICATION

Timeliness of application

Agreement in force

Same as for application for certification except with the consent of the Board. s.38(2)(a)

No agreement in force

12 months after the date of certification. s.38(2)(b)

Where strike or lockout in effect

No application may be made during the first six months of a legal strike or lockout except with the consent of the Board. s.38(5)

Criteria

A majority of the employees in the unit no longer wish to have the bargaining agent represent them. A representation vote may be held where the Board considers it appropriate. Where no collective agreement is in force, the Board revokes the certification only if satisfied that the bargaining agent has failed to make a reasonable effort to enter into one. s.39

Certification was obtained by fraud (an application may then be made at any time by a concerned employee, employer or union). s.40

CERTIFICATION OF TRADE UNIONS (continued)

TIMELINESS OF APPLICATION	APPROPRIATE BARGAINING UNIT	REPRESENTATION VOTE	DECERTIFICATION
	A recommendation by the Board for designation of an industry in a geographic region may be made only if, upon inquiry, it is satisfied that the employers concerned obtain their employees from a group of employees whose members are employed from time to time by some or all of those employers. s.34(2)		

COLLECTIVE BARGAINING AND GOVERNMENT INTERVENTION DURING NEGOTIATIONS

NOTICE TO BARGAIN

No previous collective agreement

Either party may require commencement of bargaining. s.48

Prior to expiry of collective agreement

Either party may require the other to commence bargaining within 3 months immediately preceding the date of expiry of the agreement or such longer period as may be provided. s.49(1)

Statutory obligation

Bargaining in good faith must commence within 20 days after the notice was given unless the parties agree otherwise. s.50

Statutory freeze following notice to bargain

The employer may not alter rates of pay, other terms or conditions of employment, or rights or privileges of the employees or bargaining agent until the parties have acquired the right to strike or to lock out. Alterations may be made if the bargaining agent gives its consent. s.50

FAILURE TO SETTLE DISPUTE

On his own initiative, or within 15 days of being informed in writing by either party that bargaining has not commenced or that an impasse has been reached, the Minister may:

- decide not to appoint a conciliation officer, commissioner or board. s.72
- appoint a **conciliation officer**. s.72
  - Report to Minister within 14 days (extension possible) s.73
  - If conciliation officer unsuccessful, within 15 days of receipt of report, the Minister shall either:
    - decide not to appoint a conciliation commissioner or board. s.74
      - 7 days after notification of such action... s.89
        - the parties are eligible to strike or to lock out. s.89
    - appoint a conciliation commissioner or board. s.74, 82
- appoint a **conciliation commissioner**. s.72
- establish a **conciliation board**. ss.72, 82

Report to Minister within 14 days (extension possible). s.76

Report sent forthwith to the parties and may be made public by the Minister. s.78

The parties may agree in advance that the commissioner's or board's report will be binding. s.79

7 days after the Minister has released the report to the parties... s.89

the parties are eligible to strike or to lock out. s.89

First Agreement

After the requirements pertaining to legal strikes and lockouts have been met, the Minister may direct the Board to inquire into the dispute. s.80

- Board decides not to settle the dispute. The parties continue to be eligible to strike or to lock out.
- Board decides to settle terms and conditions of a first agreement which becomes binding on the parties for one year. s.80
  - The parties may by mutual agreement amend the terms and conditions. s.80

Upon request or on his own initiative, the Minister may, at any time, appoint a mediator. s.105

The Minister may appoint an industrial inquiry commission to investigate and report on any dispute or difference or matter affecting industrial relations where he considers it advisable. s.108

REQUIREMENTS CONCERNING LEGAL STRIKES

Federal

PREREQUISITES TO LEGAL STRIKE

A collective agreement is binding on the parties until the requirements for a legal strike or lockout are met. ss.50, 67(4)

Strike action is prohibited unless:

- notice to bargain has been given; and
- the parties have failed to negotiate within 20 days after notice was given or have negotiated without success; and
- the Minister has received a notice by either party of the failure to settle a dispute or acted on his own initiative; and
- seven days have elapsed from the date on which the Minister:

  notified the parties of his intention not to appoint a conciliation officer or conciliation commissioner or to establish a conciliation board under section 72; or

  notified the parties of his intention not to appoint a conciliation commissioner or to establish a conciliation board under section 74; or

  released the report of a conciliation commissioner or conciliation board to the parties. s.89(1)

No employee may participate in a strike unless he is a member of a bargaining unit in respect of which notice to bargain was given and the conditions itemized above have been met. s.89(2)

Strikes during the period between Parliaments

Where a strike occurs (or may occur) during the period following the dissolution of Parliament for a general election and, in the opinion of the Governor in Council, it adversely affects (or would adversely affect) the national interest, he may delay any strike action until 21 days following the date fixed for the return of the writs. s.90(1)

STRIKE VOTE

The law does not require a strike vote.

PROTECTION FOR STRIKERS AND NON-STRIKING EMPLOYEES

An employer or his representative is prohibited from refusing to employ or to continue to employ any person, from discriminating in any manner in regard to employment or any term or condition of employment or from intimidating, threatening or disciplining any person because such employee has participated in a legal strike. s.94(3)(a)

An employer or his representative is prohibited from suspending, disciplining, discharging or otherwise penalizing an employee by reason of his refusal to perform all or some of the duties and responsibilities of another employee participating in a strike or affected by a lockout that is legal. s.94(3)(c)

CERTAIN OBLIGATIONS AND PROHIBITIONS APPLYING TO THE PARTIES

BARGAINING AGENT

Duty of fair representation

A trade union or its representative is prohibited from acting in a manner that is arbitrary, discriminatory, or in bad faith in the representation of any employee in the bargaining unit with respect to rights under the applicable collective agreement. s.37

Operation of hiring halls

In operating a hiring hall pursuant to a collective agreement, a trade union must apply, fairly and without discrimination, rules that it must establish and keep posted, for the purpose of making referrals of persons to employment. s.69

Limitations on the application of union security clauses requiring dismissal

A trade union or its representative may not require an employer to terminate an employee because he has been expelled or suspended from membership in the trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members as a condition of acquiring or retaining membership. s.95(e)

EMPLOYER

Compulsory deduction of union dues

Upon a request from the trade union, there must be included in the collective agreement a provision requiring the employer to deduct from the wages of each employee in the unit, whether or not he is a member of the union, the amount of the regular union dues and to remit that amount to the trade union without delay. Where an employee is not a member of the union, the regular dues do not include any payment for a benefit available only to union members. s.70

The Board may exempt religious objectors from such a provision or a requirement to belong to a trade union as a condition of employment, so long as the amount of the regular union dues is paid to a registered charity. The charity is mutually agreed upon by the employee and the union or, failing an agreement, may be designated by the Board. s.70

TIMELINESS OF APPLICATION

Following filing of constitution and other documents

No application may be made until at least 60 days after the applicant union has filed its constitution, by-laws or other constitutional documents with the Board* (unless the Board gives its consent). s.35(1)

No certified trade union, no agreement

At any time. s.35(2)(a)

Certified trade union but no agreement in force

Any time after expiration of 10 months from the date of certification. s.35(2)(b)

Agreement in force (2 years or less)

Any time in the 2 months prior to the end of the term of the agreement. s.35(2)(d)

Agreement in force (more than 2 years)

a) In the 11th or 12th month of the second or any subsequent year of the term, but at least 10 months prior to the end of the term, or
b) in the 2 months prior to the end of the term. s.35(2)(e),(3)

Where certification reviewed by the Court

Any time after expiration of 10 months from the date of final disposition, unless the Court quashes the decision of the Board to certify the bargaining agent. s. 35(2)(c)

* The term "Board" means the Labour Relations Board.

APPROPRIATE BARGAINING UNIT

Unit means any group of employees of an employer. s.1(1)(y)

The Board may decide whether a group of employees is a unit appropriate for collective bargaining and whether a person is included in or excluded from a unit. s.11(3)

The Board may also modify the description of a unit applied for, include employees in the unit or exclude employees from it, and do any other things it considers appropriate, if it believes any modified unit is reasonably similar to the unit applied for and is appropriate for collective bargaining. s.33(1)

REPRESENTATION VOTE

An application for certification must be supported by evidence, in a form satisfactory to the Board, that at least 40% of the employees in the unit have indicated support for the trade union by:

a) being members in good standing of the trade union, or
b) applying for membership and paying on their own behalf at least $2 within the 90 days preceding the application, or
c) indicating in writing their selection of the trade union as bargaining agent within the 90 days preceding the application. s.31

Before granting the certification, the Board must satisfy itself that the employees in the unit it considers appropriate for collective bargaining have voted by secret ballot at a representation vote it has conducted, and that a majority of those voting have selected the trade union as bargaining agent. ss.14(2),16(2),32(1),56(1)

The Board must conduct any representation vote and complete its inquiries into and consideration of an application for certification as soon as possible. s.32(3)

DECERTIFICATION

An application may be made by the trade union, the employees in the unit, or the employer or former employer to whom the bargaining rights relate. s.49(1)

If an application is made by the employees, it must be supported by evidence, in a form satisfactory to the Board, that at the time of the application at least 40% of the employees in the unit had indicated in writing their support for the revocation of the bargaining rights. s.49(2)

Timeliness of application

An application may be made at any time by the trade union if no collective agreement is in force. With respect to an application by the employees, timeliness is the same as for certification. s.50

An employer or former employer may apply only when he has not bargained collectively with the trade union for at least 3 years after certification, provided no agreement was entered into, or for 3 years after the first date fixed for the termination of the collective agreement, if one was entered into. s.50(5)

Where an application has been refused or withdrawn, no application that is the same or substantially the same may be made for 90 days unless the Board gives its consent. s.55

TIMELINESS OF APPLICATION

Where legal strike or lockout in effect

No application may be made without the consent of the Board. s. 35(1)

Where application refused or withdrawn

No subsequent application that is the same or substantially the same for 90 days unless the Board gives its consent. s. 55

Where certification revoked

No application from the bargaining agent concerned for the same or substantially the same unit for 6 months. s. 52(2)

APPROPRIATE BARGAINING UNIT

REPRESENTATION VOTE

DECERTIFICATION

Criteria

Certification is revoked if the Board is satisfied that:

a) in the case of an application by an employer or the employees in the unit, the results of a representation vote it has conducted show that a majority of employees voting are in favour of the revocation; or
b) in the case of an application by a former employer, there have been no employees in the unit for at least 3 years or the bargaining agent has abandoned its bargaining rights; and
c) the bargaining rights of the trade union should be revoked. ss.16(2),51(1),52(1), 56(1)

The Board may at any time give notice of its intention to decertify, and may do so if it receives no objection within 60 days of giving the notification. s.53(1),(2)

The Board must conduct any representation vote and complete its inquiries into and consideration of an application as soon as possible. s.51(3)

NOTICE TO BARGAIN

No previous collective agreement

Either the bargaining agent or the employer may give notice to commence bargaining. s.57(1)

Prior to expiry of collective agreement

Either party may give notice to commence bargaining not less than 60 days and not more than 120 days prior to the expiry of the agreement, or within a longer period provided for in the agreement. s.57(2)

Statutory obligations

The parties must commence collective bargaining in good faith within 30 days after notice is given. s.58(1)

The parties must exchange bargaining proposals within 15 days of their first meeting or a longer period they may agree upon. s.58(2)

Statutory freeze following notice to bargain

An employer may not alter rates of pay, any term or condition of employment or any right or privilege of his employees or of their bargaining agent. However, alterations may be made if they are in accordance with an established custom or practice of the employer or with the consent of the bargaining agent or in accordance with a collective agreement that is in operation. The freeze applies until:

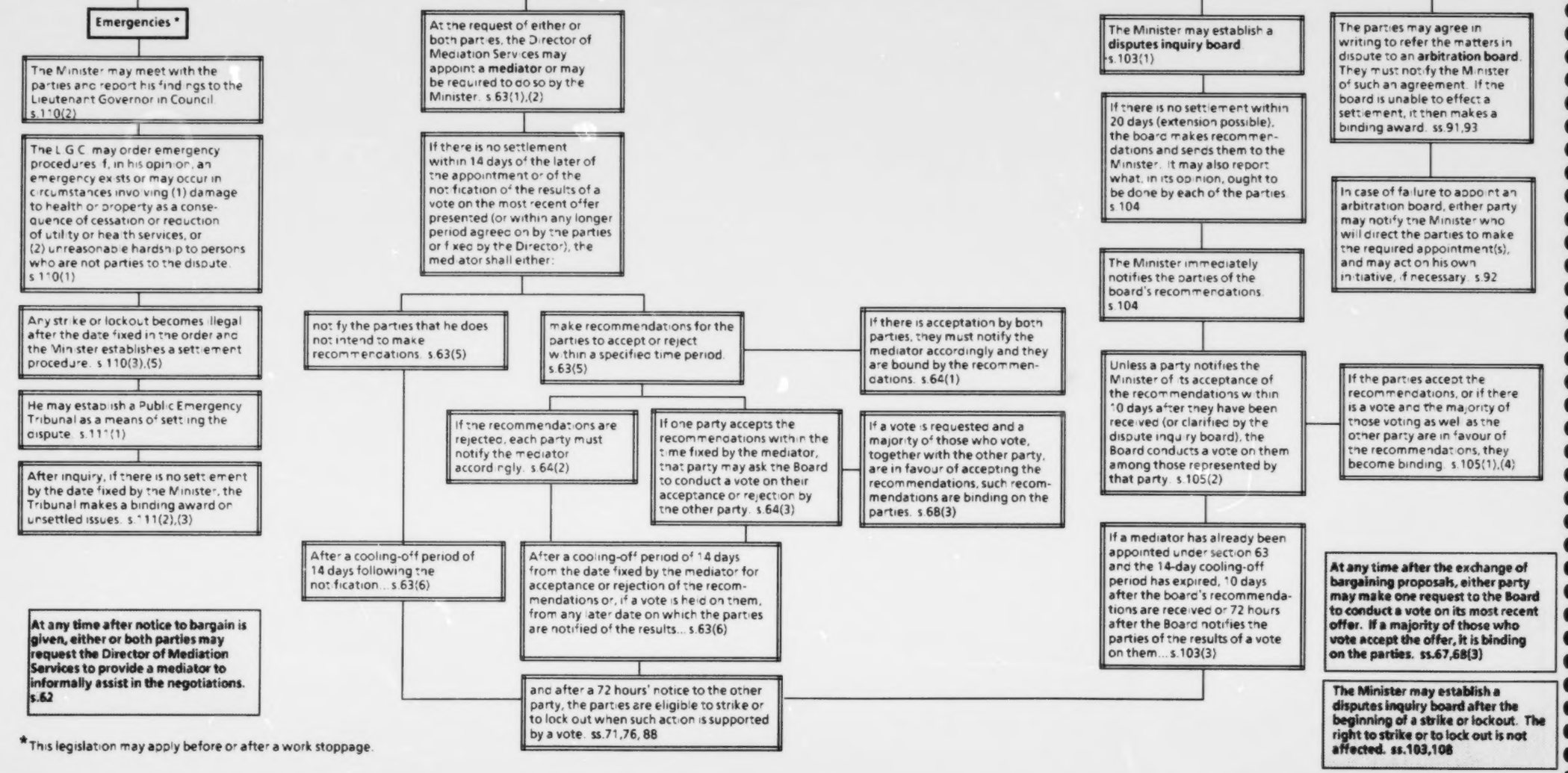
a) 30 days after the certification;
b) if a notice to bargain is served within that 30-day period, until 60 days after the date of the notice; or
c) if a notice to bargain is given when a collective agreement is in effect, until a legal strike or lockout takes place or the bargaining rights are terminated. s.145

FAILURE TO SETTLE DISPUTE

(see next page)

COLLECTIVE BARGAINING AND GOVERNMENT INTERVENTION DURING NEGOTIATIONS (continued)

FAILURE TO SETTLE DISPUTE


Emergencies *
The Minister may meet with the parties and report his findings to the Lieutenant Governor in Council. s.110(2)
The LGC may order emergency procedures if, in his opinion, an emergency exists or may occur in circumstances involving (1) damage to health or property as a consequence of cessation or reduction of utility or health services, or (2) unreasonable hardship to persons who are not parties to the dispute. s.110(1)
Any strike or lockout becomes illegal after the date fixed in the order and the Minister establishes a settlement procedure. s.110(3),(5)
He may establish a Public Emergency Tribunal as a means of settling the dispute. s.111(1)
After inquiry, if there is no settlement by the date fixed by the Minister, the Tribunal makes a binding award on unsettled issues. s.111(2),(3)
At any time after notice to bargain is given, either or both parties may request the Director of Mediation Services to provide a mediator to informally assist in the negotiations. s.62
At the request of either or both parties, the Director of Mediation Services may appoint a mediator or may be required to do so by the Minister. s.63(1),(2)
If there is no settlement within 14 days of the later of the appointment or of the notification of the results of a vote on the most recent offer presented (or within any longer period agreed on by the parties or fixed by the Director), the mediator shall either:
notify the parties that he does not intend to make recommendations. s.63(5)
make recommendations for the parties to accept or reject within a specified time period. s.63(5)
If there is acceptation by both parties, they must notify the mediator accordingly and they are bound by the recommendations. s.64(1)
If the recommendations are rejected, each party must notify the mediator accordingly. s.64(2)
If one party accepts the recommendations within the time fixed by the mediator, that party may ask the Board to conduct a vote on their acceptance or rejection by the other party. s.64(3)
If a vote is requested and a majority of those who vote, together with the other party, are in favour of accepting the recommendations, such recommendations are binding on the parties. s.68(3)
After a cooling-off period of 14 days following the notification... s.63(6)
After a cooling-off period of 14 days from the date fixed by the mediator for acceptance or rejection of the recommendations or, if a vote is held on them, from any later date on which the parties are notified of the results... s.63(6)
and after a 72 hours' notice to the other party, the parties are eligible to strike or to lock out when such action is supported by a vote. ss.71,76, 88
The Minister may establish a disputes inquiry board. s.103(1)
If there is no settlement within 20 days (extension possible), the board makes recommendations and sends them to the Minister. It may also report what, in its opinion, ought to be done by each of the parties. s.104
The Minister immediately notifies the parties of the board's recommendations. s.104
Unless a party notifies the Minister of its acceptance of the recommendations within 10 days after they have been received (or clarified by the dispute inquiry board), the Board conducts a vote on them among those represented by that party. s.105(2)
If the parties accept the recommendations, or if there is a vote and the majority of those voting as well as the other party are in favour of the recommendations, they become binding. s.105(1),(4)
If a mediator has already been appointed under section 63 and the 14-day cooling-off period has expired, 10 days after the board's recommendations are received or 72 hours after the Board notifies the parties of the results of a vote on them... s.103(3)
The parties may agree in writing to refer the matters in dispute to an arbitration board. They must notify the Minister of such an agreement. If the board is unable to effect a settlement, it then makes a binding award. ss.91,93
In case of failure to appoint an arbitration board, either party may notify the Minister who will direct the parties to make the required appointment(s), and may act on his own initiative, if necessary. s.92
At any time after the exchange of bargaining proposals, either party may make one request to the Board to conduct a vote on its most recent offer. If a majority of those who vote accept the offer, it is binding on the parties. ss.67,68(3)
The Minister may establish a disputes inquiry board after the beginning of a strike or lockout. The right to strike or to lock out is not affected. ss.103,108

*This legislation may apply before or after a work stoppage.

REQUIREMENTS CONCERNING LEGAL STRIKES

PREREQUISITES TO LEGAL STRIKE

Strike action is prohibited unless:

a) the term of the collective agreement has expired;

b) a strike vote supervised by the Board has resulted in a majority in favour of a strike;

c) the results of the strike vote have been filed with the Board, and the vote remains current;

d) strike notice has been given; and

e) the strike commences on the date and at the time and location specified in the notice or in an amendment to the notice if one is agreed to and is permitted under the Act ss.71,103(3)

Also, if a disputes inquiry board has been established before a strike or lockout, no strike may take place until at least 10 days after the Minister serves a copy of the board's recommendations on the parties or, if the Labour Relations Board conducts a vote on their acceptance or rejection, until at least 72 hours after notification of the results of that vote. ss.71,103(3)

Strike notice

The trade union must give the employer, in writing, at least 72 hours' notice of the date, time and initial location at which the strike will commence. It must, immediately afterward, serve a similar notice to the mediator appointed under section 63. s.76(1)

A strike notice becomes ineffective when a strike does not occur on the date and at the time and location specified in it or any amendment to it agreed upon by the parties. Another notice must then be served before the strike may occur. ss.77,78

Duration of strike

A strike is deemed to end on the expiration of 2 years from the date it commenced. s.88

STRIKE VOTE

A strike vote supervised by the Board is mandatory. s.71

No strike vote will be supervised until:

a) the expiry of the term of the collective agreement;
b) the formal appointment of a mediator under section 63; and
c) the expiry of the 14-day cooling-off period preceding a strike or lockout. s.73(2), (3)

The results of a strike vote are determined on the basis of a majority of those employees who actually vote. s.74(3)

Any question arising with respect to a strike vote must be referred to the Board, whose decision is final and binding. s.74(4)

If no strike occurs within 120 days of the strike vote, the vote is deemed to be void, and a strike may not take place unless a new vote is conducted in accordance with the Code. s.75(1)

No strike vote may be taken after the expiry of two years from the end of the 14-day cooling-off period. When such a prohibition is in effect, the dispute is deemed to no longer exist. s.75(2),(3)

STRIKE REPLACEMENTS, REINSTATEMENT AND OTHER PROVISIONS

When a strike or lockout ends as a result of a settlement or the cancellation of bargaining rights, or when it terminates two years after its commencement, any employee not working because of his involvement in a legal work stoppage may apply to the employer to return to work in preference to any employee hired as a replacement worker. The application for reinstatement must be made in writing within 14 days of the date on which the employee learns that the strike or lockout has ended (but not more than 30 days after the date it ended) or immediately if the work stoppage ends after two years. Where the employer's operations are continuing or resuming, and the type of work the employee had performed continues, the employer is required to reinstate the employee. If there is no collective agreement in place, the reinstatement must be effected on terms agreed upon by the employer and the employee without discrimination based on the exercise of a legal right. s.88

An employer or his representative is prohibited from suspending, disciplining, discharging or otherwise penalizing an employee by reason of his refusal to perform all or some of the duties and responsibilities of another employee participating in a strike. s.147(f)

An employer or his representative is prohibited from using or permitting the use of a person or organization not involved in a dispute and whose primary object, in the Board's opinion, is to prevent, interfere with or break up legal activities in respect of a strike or lockout. s.152(1)

CERTAIN OBLIGATIONS AND PROHIBITIONS APPLYING TO THE PARTIES

BARGAINING AGENT

Duty of fair representation

A trade union or its representative may not deny an employee or former employee, who is or was in the bargaining unit, the right to be fairly represented by the trade union with respect to his rights under the collective agreement. s. 151(1)

Limitations on the application of union security clauses requiring dismissal

A trade union or its representative may not require an employer to terminate an employee because he has been expelled or suspended from membership in the trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members as a condition of acquiring or retaining membership. s. 149(g)

EMPLOYER

Authorization to deduct union dues

The employer must, from wages due to the employee, make the payments to the trade union authorized in writing by the employee. The authorization continues in force for at least 3 months and thereafter until revoked. s. 25

INDUSTRIAL RELATIONS ACT (R.S.B.C. 1979, c.212, as amended)

CERTIFICATION OF TRADE UNIONS

British Columbia

TIMELINESS OF APPLICATION

No certified trade union, no agreement

At any time. s. 39(1)

Certified trade union but no agreement in force

When:

a) 6 months have elapsed since the date of certification of a trade union for the unit, or

b) the Council* has consented to an application before the expiry of the period of 6 months. s. 39(2)(a)

Agreement in force

Only during the 7th and 8th months in each year of its term or of any renewal or continuation thereof. However, where, during this period, one or more applications have been made, regardless of the outcome, or where there is certification or variation of a certification in favour of a council of trade unions, no application will be considered until the second such period after the date of application, certification or variation of certification, whichever is latest. s. 39(2)(b), (3), (6)

Exceptions

a) A trade union that is a party to the collective agreement, but is not certified with respect to employees covered by it, may apply at any time; and

b) a council of trade unions comprising trade unions that are parties to collective agreements may apply at any time to be certified in place of those trade unions. s. 39(4)

APPROPRIATE BARGAINING UNIT

"Unit" means a group of employees, and the expression "appropriate for collective bargaining" or "appropriate bargaining unit", where used with reference to a unit, means a unit that is determined by the Council to be appropriate for collective bargaining whether it is an employer unit, craft unit, technical unit, plant unit, or any other unit, and whether or not the employees therein are employed by one or more employers. s. 1(1)

In determining that a unit is appropriate for collective bargaining, the Council may include or exclude employees. s. 42(1)

Professional employees form separate units unless a request to have them included in another unit is made by a trade union claiming to represent a majority of them. s. 41(2), (3)

Dependent contractors may be included in a unit if a majority of them so wish, and reasonable procedures have been developed to integrate them. s. 48

REPRESENTATION VOTE

Where there is no collective agreement or certified trade union, an application may be made by a trade union claiming to represent not less than 45% of the employees in a unit. In other cases, an application may be made by a union claiming to have majority support. s. 39(1), (2)

Where, on the date an application is received, not less than 45% of the employees in the unit are members in good standing of the trade union, the Council must order a representation vote by secret ballot. The vote must be held within 10 days after the application or such longer period as ordered by the Council if it is conducted by mail. ss. 43(1), 55(1)

Certification takes place if the majority of the votes favour having the union as bargaining agent. s. 43(1)

The Council may certify or refuse to certify the trade union, notwithstanding that, by reason of an unfair labour practice, the true wishes of the employees cannot be ascertained. However, in such a situation, a certification may be subject to conditions to be substantially fulfilled within 12 months or a lesser period specified by the Council. s. 8(4)(e)

DECERTIFICATION

Certification may be cancelled by the Council if it is satisfied that the trade union has ceased to be a trade union or that the employer has ceased to be the employer of the employees in the unit. s. 52(1)

Mandatory representation vote

The Council must order that a representation vote be taken where at least 45% of the employees in the unit sign an application for cancellation of the certification. The vote must be held within 10 days after the application or such longer period as ordered by the Council if it is conducted by mail. s.52(2)

There may be no application for a mandatory vote:

a) during the 10 months following certification,

b) during the 10 months following a refusal to cancel the certification because of an unfair labour practice, or

c) during a period determined by the Council (minimum 90 days) following a refusal to cancel the certification because a majority of votes were in favour of the union. ss. 49,52(3)

The Council may cancel or refuse to cancel certification without regard to the result of any vote if any employees in the unit are affected by an order pertaining to a prohibited act, and if it considers that, by reason of an unfair labour practice, a vote is unlikely to disclose the true wishes of the employees. s. 52(5)

* The term "Council" means the Industrial Relations Council.

CERTIFICATION OF TRADE UNIONS (continued)

TIMELINESS OF APPLICATION

Where application refused

No new application by the same applicant for a period determined by the Council (minimum 90 days). s.49

Where certification has been cancelled without regard to a vote, due to an unfair labour practice

No new application by the trade union for 10 months. s. 52(7)

Where certification cancelled

No application by another trade union for 10 months unless the Council abridges that period. s. 52(11)

APPROPRIATE BARGAINING UNIT

REPRESENTATION VOTE

DECERTIFICATION

Other causes for decertification

An employer may apply to the Council for cancellation of the certification of a trade union on the ground that there have been no employees in the unit during the 2 years preceding the application. The Council must immediately inquire into the matter and complete its inquiry within 30 days. If it is satisfied that there is proper ground for the application and that the conduct of the employer is in the circumstances fair and reasonable, the Council must cancel the certification. s. 52(8),(8.1)

On receipt of an application for cancellation of certification, the Council may grant this demand if it is satisfied that the trade union has abandoned its bargaining rights. s. 52(12)

NOTICE TO BARGAIN

No previous collective agreement

Either party may require the other to commence bargaining. s. 61(1)

Prior to expiry of collective agreement

Either party may, at any time within 4 months immediately preceding the expiry date of the agreement, require the other to commence bargaining. s.62(1)

If a notice is not given 90 days or more prior to the expiry of the agreement, the parties are deemed to have given notice 90 days prior to the expiry. s.62(4)

Copy to Council

A copy of the notice to bargain must be sent to the chairman of the Dispute Resolution Division of the Council within 3 days after it has been given. s.62(2)

Statutory obligation

Bargaining in good faith must commence within 10 days after the date of notice. s.63

Statutory freeze following notice to bargain

During negotiations for a first collective agreement, the employer may not alter rates of pay or other terms or conditions of employment until 4 months after the certification of the trade union, unless a collective agreement is entered into or an authorization is granted by the Council. s.61(1),(2)

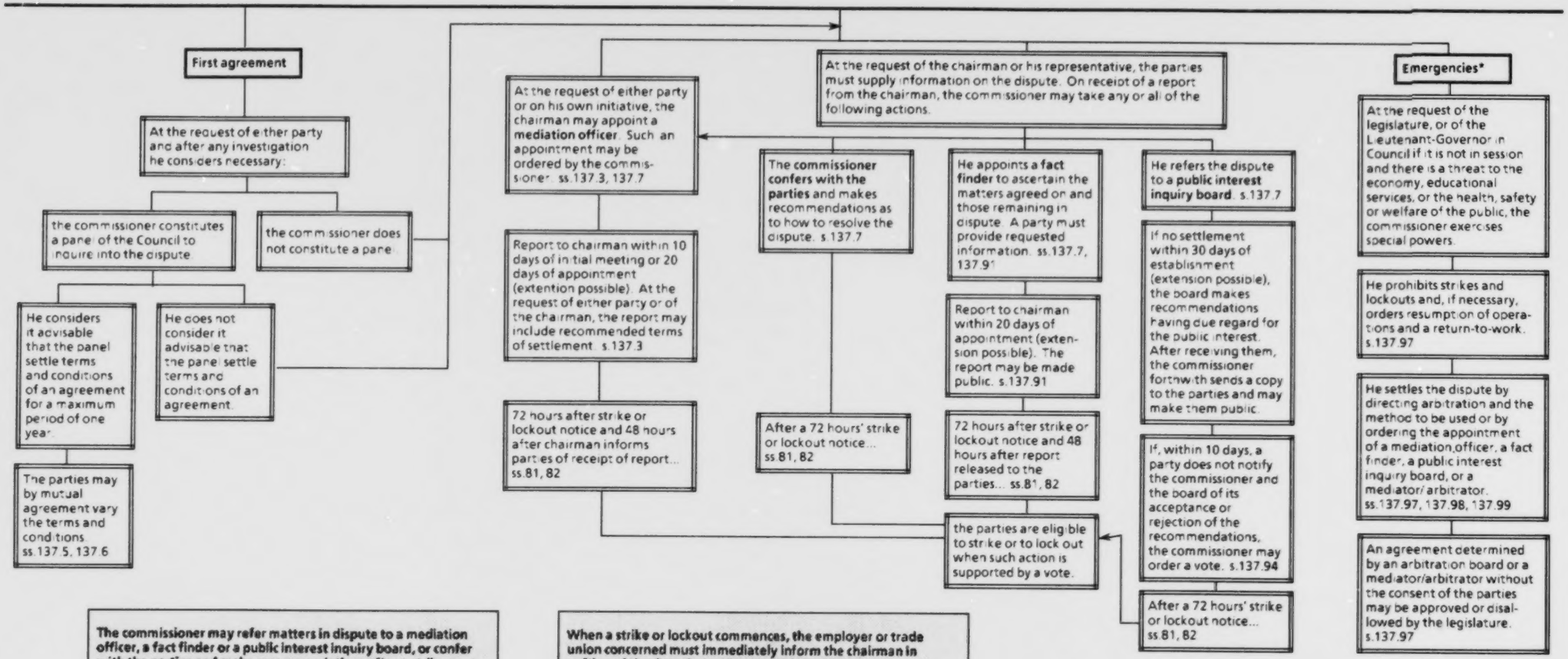
FAILURE TO SETTLE DISPUTE

(see next page)

NOTE: On the next page, the term "commissioner" means the commissioner of the Industrial Relations Council and the term "chairman" means the chairman of the Disputes Resolution Division of the Council.

COLLECTIVE BARGAINING AND GOVERNMENT INTERVENTION DURING NEGOTIATIONS (continued)

FAILURE TO SETTLE DISPUTE


First agreement
At the request of either party and after any investigation he considers necessary:
the commissioner constitutes a panel of the Council to inquire into the dispute
the commissioner does not constitute a panel
He considers it advisable that the panel settle terms and conditions of an agreement for a maximum period of one year.
He does not consider it advisable that the panel settle terms and conditions of an agreement.
The parties may by mutual agreement vary the terms and conditions. ss.137.5, 137.6
At the request of either party or on his own initiative, the chairman may appoint a mediation officer. Such an appointment may be ordered by the commissioner. ss.137.3, 137.7
Report to chairman within 10 days of initial meeting or 20 days of appointment (extention possible). At the request of either party or of the chairman, the report may include recommended terms of settlement. s.137.3
72 hours after strike or lockout notice and 48 hours after chairman informs parties of receipt of report... ss.81, 82
At the request of the chairman or his representative, the parties must supply information on the dispute. On receipt of a report from the chairman, the commissioner may take any or all of the following actions.
The commissioner confers with the parties and makes recommendations as to how to resolve the dispute. s.137.7
After a 72 hours' strike or lockout notice... ss.81, 82
He appoints a fact finder to ascertain the matters agreed on and those remaining in dispute. A party must provide requested information. ss.137.7, 137.91
Report to chairman within 20 days of appointment (extension possible). The report may be made public. s.137.91
72 hours after strike or lockout notice and 48 hours after report released to the parties... ss.81, 82
He refers the dispute to a public interest inquiry board. s.137.7
If no settlement within 30 days of establishment (extension possible), the board makes recommendations having due regard for the public interest. After receiving them, the commissioner forthwith sends a copy to the parties and may make them public.
If, within 10 days, a party does not notify the commissioner and the board of its acceptance or rejection of the recommendations, the commissioner may order a vote. s.137.94
After a 72 hours' strike or lockout notice... ss.81, 82
the parties are eligible to strike or to lock out when such action is supported by a vote.
Emergencies*
At the request of the legislature, or of the Lieutenant-Governor in Council if it is not in session and there is a threat to the economy, educational services, or the health, safety or welfare of the public, the commissioner exercises special powers.
He prohibits strikes and lockouts and, if necessary, orders resumption of operations and a return-to-work. s.137.97
He settles the dispute by directing arbitration and the method to be used or by ordering the appointment of a mediation officer, a fact finder, a public interest inquiry board, or a mediator/arbitrator. ss.137.97, 137.98, 137.99
An agreement determined by an arbitration board or a mediator/arbitrator without the consent of the parties may be approved or disallowed by the legislature. s.137.97

The commissioner may refer matters in dispute to a mediation officer, a fact finder or a public interest inquiry board, or confer with the parties and make recommendations after a strike or lockout has commenced. ss.137.7

Before the commencement of a strike or lockout, the employer may make one request that a vote by secret ballot of the employees in the unit be taken on his last offer, and the commissioner will order such a vote. ss.55(1), 137.7

When a strike or lockout commences, the employer or trade union concerned must immediately inform the chairman in writing of the date that action was taken. s.137.4

During a strike or lockout, the commissioner may direct a vote by secret ballot of the employees in the bargaining unit on the employer's last offer if he considers that it is in the public interest to do so. ss.55(1), 137.7

The Minister may, on application or on his own initiative, refer matters in dispute to an industrial inquiry commission for investigation and report. If the parties agree in writing, the report becomes binding. s.122

*This legislation is not in force. It will apply before or after a work stoppage.

REQUIREMENTS CONCERNING LEGAL STRIKES

PREREQUISITES TO LEGAL STRIKE

Strike action is prohibited:

- during the term of a collective agreement; ss. 79(1), 79.1
- until the trade union gives a written strike notice to the employer; s. 81(3)(b)
- until 72 hours after the notice has been filed with the chairman of the Disputes Resolution Division; s.81(3)(b)
- where a mediation officer has been appointed, until 48 hours after the chairman of the Disputes Resolution Division informs the trade union that he has received the report and after the expiration of the 72 hours' strike notice; s. 81(3)(b)
- where a fact finder has been appointed, until 48 hours after the chairman of the Disputes Resolution Division gives the report to the parties and after the expiration of the 72 hours' strike notice. s. 81(3)(b)

Longer period of notice

On application or on its own initiative, the Council may direct that a longer period of strike notice be given for the protection of perishable property or other property or persons affected by perishable property. s. 81(4)

Limitations to the right to strike

A trade union may not declare a strike if it is subject to an order made under the Act preventing the strike. s. 81(3)(b)

Where the minister, after receiving a report from the commissioner, considers that a dispute poses a threat to the economy of the province, to the health, safety or welfare of its residents, or to the provision of educational services, he may do either or both of the following:

a) order a cooling-off period of up to 40 days during which the right to strike or to lock out is suspended (only one such order may be made for any dispute);

b) order the Council to designate the facilities, productions and services that it considers necessary or essential to prevent an immediate and serious danger of this nature s. 137.8

STRIKE VOTE

A strike vote may not be taken until the parties have bargained collectively. s. 80

A vote is mandatory and the result is determined by a majority of those in the unit who vote. s. 81(1)

Various requirements are prescribed for strike votes. They include giving prior notification to the Council and the requirement that one or more observers appointed by the Council be present during the conduct of balloting and counting of votes. Also, a returning officer appointed by a trade union to conduct the taking and counting of a strike vote must ensure the secrecy of the ballot and the observance of general rules of voting. Furthermore, the returning officer must file the results with the Council, unless otherwise directed by it, and refer to it any question as to the eligibility of a person to vote. Industrial Relations (Voting) Regulation ss.5-11.

On application by a person directly affected by a strike vote or an impending strike, or on its own initiative, the Council may declare a vote to be void if it is satisfied that it has not been held in accordance with the Act or the regulations and may prescribe the terms of any subsequent vote. s. 81(2)

Except as otherwise agreed in writing between the parties, the strike may be declared only during the 3 months following the date on which the vote was taken. s. 81(3)(a)

Remarks re: strike and ratification votes

A collective agreement concluded outside the province applies to affected employees in the province only if it has been ratified by a majority of them. s. 6

A strike or ratification vote must be by secret ballot, and the results must be made available to the union members and the employer affected. s. 55(1)

All employees in a bargaining unit, whether or not they are unionized, are entitled to participate in strike and ratification votes held by the trade union. This does not apply to an employee working during a legal work stoppage as a replacement for an employee on strike or locked out. If a trade union coordinates collective bargaining on behalf of more than one bargaining unit, the ballots may not be counted until all units involved have voted. s. 55.1

REQUIREMENTS CONCERNING LEGAL STRIKES (continued)

PREREQUISITES TO LEGAL STRIKE	PROHIBITION REGARDING PROFESSIONAL STRIKEBREAKERS
When a cooling-off period is ordered and/or essential services are designated, the commissioner notifies the parties accordingly, and he has the power to determine the extent to which operations must resume and employees must return to work, as well as the time at which and the manner in which this is to be done. The terms and conditions of the last collective agreement apply to the parties while the order, direction, or designation remains in effect. s. 137.9	An employer is prohibited from using or from permitting the use of professional strikebreakers or an organization of them. A "professional strikebreaker" is a person who is not involved in a dispute and whose primary objective, in the Council's opinion, is to prevent, interfere with, or break up a lawful strike or to assist an employer in a lockout. ss. 1(1), 3(3)(d)

CERTAIN OBLIGATIONS AND PROHIBITIONS APPLYING TO THE PARTIES

BARGAINING AGENT

Duty of fair representation

A trade union or council of trade unions must not act in a manner that is arbitrary, discriminatory, or in bad faith in representing any of the employees in a bargaining unit, whether or not they are members of the trade union or of a constituent union of the council. Similarly, a trade union must not act in a manner that is arbitrary, discriminatory, or in bad faith in operating a hiring hall or other referral service pursuant to a collective agreement. s. 7(1)

Limitations on the application of union security clauses requiring dismissal

A trade union or its representative may not require an employer to terminate an employee, or otherwise to discriminate against him because the employee has been expelled or suspended from membership in the trade union or such membership has been denied or withheld. This does not apply where the employee has engaged in illegal activity against the union or has failed to pay the periodic dues, assessments, and initiation fees uniformly required to be paid by all members as a condition of acquiring or retaining membership. s.5.1

A trade union or its representative may not require an employer to terminate an employee due to his expulsion or suspension from that trade union on the ground that he is or was a member of another trade union. s.9(2)

EMPLOYER

Compulsory deduction of union dues

An employer or his representative may not refuse to agree with a certified trade union, engaged in collective bargaining to conclude a first agreement, that all employees in the unit, whether union members or not, will pay union dues. s.3(3)(e)

The Council may exempt religious objectors from a requirement to belong to a trade union as a condition of continued employment or to pay to the union dues, fees or assessments, so long as these amounts are paid to a charitable organization. The charity is mutually agreed upon by the employee and the union or, failing an agreement, a registered charitable organization is designated by the Council. Such an employee is not entitled to participate in a vote conducted by the union or directed by the Council under the Act. s.11

Authorization to deduct union dues

An employer must honour an employee's written assignment of wages to a certified trade union unless the assignment is declared null and void by the Council or is revoked by the assignor. s. 10(1)

TIMELINESS OF APPLICATION

No certified trade union, no agreement

At any time. s.34(2)

Certified trade union but no agreement in force

After the expiry of 12 months from the date on which the incumbent bargaining agent was certified or from the date on which any court proceedings regarding the certification were terminated, whichever is later, or when certification is cancelled. s.35(1)

If an agreement has expired and bargaining has taken place, 90 days after termination or before if the bargaining agent consents. s.35(3)

Agreement in force

After 6 months from the date on which the agreement became effective and before the last 3 months of its term. s.35(2)(a),(b)

Agreement in force (18 months or less)

During the 3 months immediately preceding the last 3 months of the term. s.35(2)(c)

Agreement in force (more than 18 months)

During the 3 months immediately preceding any anniversary of the date on which the agreement became effective or during the 3 months immediately preceding the last 3 months of the term. s.35(2)(d)

APPROPRIATE BARGAINING UNIT

"Unit" means an employee or a group of employees, and the expression "appropriate for collective bargaining", where used with reference to a unit, means a unit that is appropriate for collective bargaining whether it is an employer unit, craft unit, technical unit, plant unit, or any other unit and whether or not the employees therein are employed by one or more employers. s.1

In determining whether a proposed unit is appropriate for collective bargaining, the Board*, if it deems appropriate to do so, may alter the description of the unit, include or exclude employees or classes of employees or create two or more units. ss.39(2),142(5)

However, the Board may not include in a unit professional employees practising a profession with other employees unless it is satisfied that a majority of the professional employees wish to be included in the unit. s.39(3)

Where the Board allows an application for certification during a legal strike or lockout, unless in its opinion there are compelling industrial relations reasons to the contrary, the unit is deemed to contain only those employees who were in it and on the employer's payroll on the last day before the work stoppage and who, in its opinion, have a continuing interest in the outcome of the conflict. s.35(6)

REPRESENTATION VOTE

Where the Board is satisfied that any dispute as to the composition of the unit cannot affect the union's right to certification, it may allow certification on an interim basis pending a final determination. s.39(4)

Once it has determined to its satisfaction the number of employees in the unit who, as of the date of the filing of the application, wished to be represented by the union, the Board:

a) certifies if 55% or more;

b) conducts a vote if 45% or more but less than 55%;

c) rejects the application if less than 45%. s.40(1)

Membership in a union is proof of the employees' wishes. Such membership may be revoked prior to the date of application. s.45(1),(2)

Exceptions

The Board conducts a vote where a union, which has the support of at least 45% of the employees in the unit makes an application to displace another trade union. s.40(2)

The Board has discretion to certify a union without majority support if it finds that the employer has committed an unfair labour practice as a result of which the employees' true wishes are not likely to be ascertained and that the union has adequate membership support. s.41

DECERTIFICATION

An application may be made by an employee claiming to represent a majority in a unit. s.49(1)

Timeliness of application

Same periods as specified for certification when no agreement is in force or there is an agreement or a legal work stoppage. s.49(2)

Exception

In all cases, at any time with the consent of the Board. s.49(3)

Criteria

A majority of the employees in the unit who participate in a vote no longer wish to be represented by the union. s.51

Certification was obtained by fraud (an application may be made by a concerned employee, employer or union). s.52

Failure by the bargaining agent to exercise bargaining rights within 12 months after certification or any court proceeding arising from it, whichever is later. s.53(1)

Vote

The Board conducts a vote when satisfied that at least 50% of the employees in the unit support the application. It may, however, dispense with a vote when the application is not opposed by the union. s.50(2),(3)

* The term "Board" means the Manitoba Labour Board.

TIMELINESS OF APPLICATION

Agreement in force (1 year and provides for successive 1 year term(s))

During the 3 months previous to the 3 months immediately preceding any date on which the agreement may be terminated s.35(2)(e)

Agreement in force (first agreement)

If the terms and conditions have been settled by the Board, no application during the term of the agreement. s.35(4)

Legal work stoppage

After 6 months from the date of commencement and with the consent of the Board. s.35(5)

Exceptions

Where the parties to an agreement reach settlement within fewer than 30 days from the date of giving notice to bargain, on application, the Board may require either or both of them to show cause why an application by another union should not be permitted. s.36(1)

In all cases, at any time with the consent of the Board. s.37

Where application refused

No application by the same applicant for the same unit, part of it, or any unit containing the same employees for at least 6 months, except as otherwise specified by the Board Manitoba Labour Board rules of procedure s.8(14),(15)

APPROPRIATE BARGAINING UNIT

REPRESENTATION VOTE

The Board may dismiss an application or order a vote where it is satisfied that, in the solicitation of memberships, the union has used intimidation, fraud, coercion, or penalty threat. s.45(4)

In any certification proceeding, the Board may order a vote for the purpose of satisfying itself as to the wishes of employees in a unit or proposed unit. The result of a vote is determined by the majority of those who cast a ballot. ss.40(3),48(1)

A vote conducted by the Board in a proposed unit may be treated as a representation vote once the unit has been determined. s.48(3)

DECERTIFICATION

If the Board is satisfied that less than 50% of the employees support the application, the Board dismisses the application. s.50(1)

In any case, the Board may dismiss an application without a vote if satisfied that bad faith on the part of the employer resulted in the bargaining process being frustrated. s.50(4)

NOTICE TO BARGAIN

No previous collective agreement

Either party may require commencement of bargaining. s.60

Prior to expiry of collective agreement

Not more than 90 days and not less than 30 days preceding expiry date. s.61(1)

Agreement may provide otherwise. s.61(2)

Revision during term

Either party may require bargaining, subject to provisions of the agreement. s.61(3)

Statutory obligation

Bargaining in good faith must commence within 10 clear days after notice was given or such further time as the parties may agree upon. ss.62, 63(1)

Statutory freeze after certification or the termination of a collective agreement

An employer may not alter rates of wages or any other term or condition of employment. However, alterations may be made with the consent of the bargaining agent or in accordance with a collective agreement that is in operation, or if the bargaining rights have been cancelled. The freeze applies until:

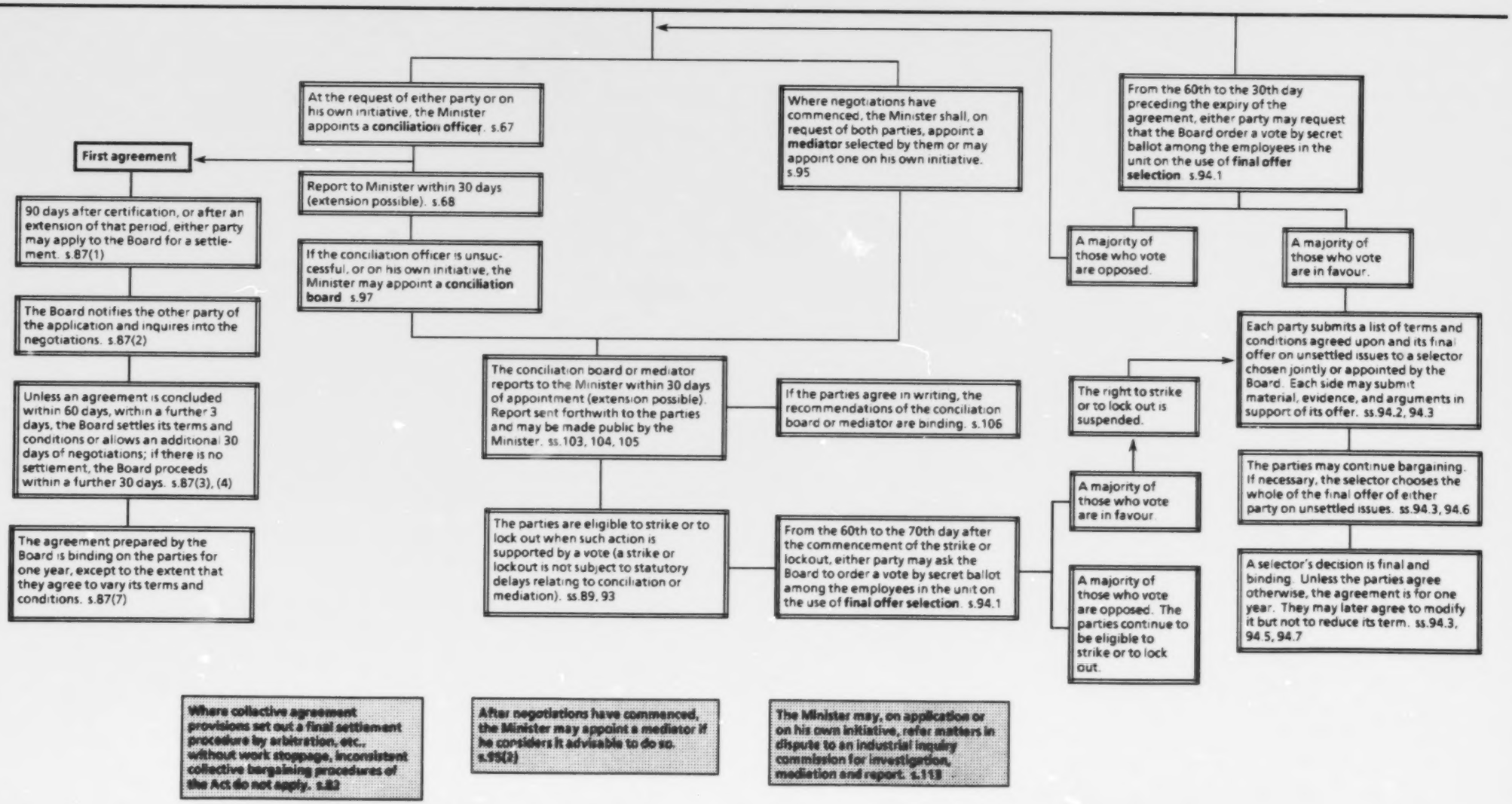
a) 90 days after certification (that period may be extended by the Board for a further period not exceeding 90 days); or
b) 12 months after the termination of a collective agreement (unless a strike or lockout has taken place). s.10(2),(3),(4)

FAILURE TO SETTLE DISPUTE

(see next page)

COLLECTIVE BARGAINING AND GOVERNMENT INTERVENTION DURING NEGOTIATIONS (continued)

FAILURE TO SETTLE DISPUTE


First agreement
90 days after certification, or after an extension of that period, either party may apply to the Board for a settlement. s.87(1)
The Board notifies the other party of the application and inquires into the negotiations. s.87(2)
Unless an agreement is concluded within 60 days, within a further 3 days, the Board settles its terms and conditions or allows an additional 30 days of negotiations; if there is no settlement, the Board proceeds within a further 30 days. s.87(3), (4)
The agreement prepared by the Board is binding on the parties for one year, except to the extent that they agree to vary its terms and conditions. s.87(7)
At the request of either party or on his own initiative, the Minister appoints a conciliation officer. s.67
Report to Minister within 30 days (extension possible). s.68
If the conciliation officer is unsuccessful, or on his own initiative, the Minister may appoint a conciliation board. s.97
Where negotiations have commenced, the Minister shall, on request of both parties, appoint a mediator selected by them or may appoint one on his own initiative. s.95
The conciliation board or mediator reports to the Minister within 30 days of appointment (extension possible). Report sent forthwith to the parties and may be made public by the Minister. ss.103, 104, 105
If the parties agree in writing, the recommendations of the conciliation board or mediator are binding. s.106
The parties are eligible to strike or to lock out when such action is supported by a vote (a strike or lockout is not subject to statutory delays relating to conciliation or mediation). ss.89, 93
From the 60th to the 70th day after the commencement of the strike or lockout, either party may ask the Board to order a vote by secret ballot among the employees in the unit on the use of final offer selection. s.94.1
From the 60th to the 30th day preceding the expiry of the agreement, either party may request that the Board order a vote by secret ballot among the employees in the unit on the use of final offer selection. s.94.1
A majority of those who vote are opposed.
A majority of those who vote are in favour.
The right to strike or to lock out is suspended.
A majority of those who vote are in favour.
A majority of those who vote are opposed. The parties continue to be eligible to strike or to lock out.
Each party submits a list of terms and conditions agreed upon and its final offer on unsettled issues to a selector chosen jointly or appointed by the Board. Each side may submit material, evidence, and arguments in support of its offer. ss.94.2, 94.3
The parties may continue bargaining. If necessary, the selector chooses the whole of the final offer of either party on unsettled issues. ss.94.3, 94.6
A selector's decision is final and binding. Unless the parties agree otherwise, the agreement is for one year. They may later agree to modify it but not to reduce its term. ss.94.3, 94.5, 94.7
Where collective agreement provisions set out a final settlement procedure by arbitration, etc., without work stoppage, inconsistent collective bargaining procedures of the Act do not apply. s.82
After negotiations have commenced, the Minister may appoint a mediator if he considers it advisable to do so. s.95(2)
The Minister may, on application or on his own initiative, refer matters in dispute to an industrial inquiry commission for investigation, mediation and report. s.113

REQUIREMENTS CONCERNING LEGAL STRIKES

PREREQUISITES TO LEGAL STRIKE

Strike action is prohibited:

- when an application is made to the Board to settle the terms and conditions of a first collective agreement between the parties; s.87(5)
- until 90 days after the date on which the union was certified as bargaining agent and any extension of that period (not exceeding 90 days) ordered by the Board; s.89(1)
- while a collective agreement is in force; s.89(2)
- by a trade union that is not entitled to bargain collectively; s.90
- by an employee who is not in a unit for which a trade union is entitled to bargain collectively; s.92
- unless a union-conducted vote is in favour of a strike; s.93
- where the employees in a unit vote on the question of resolving a dispute by the process of final offer selection and a majority of those who vote are in favour. s.94.1(11)

STRIKE VOTE

A secret strike vote is mandatory and is decided by a majority of the employees in the unit who cast ballots. Reasonable notice and opportunity to vote must be given by the union. s.93

Remark re: ratification vote

Within 30 days of the reaching of agreement between the parties, a vote by secret ballot must be held among the union members in the unit on the acceptance or rejection of the proposed collective agreement. The union must give reasonable notice and opportunity to cast a ballot. The question is determined by the majority of those who vote and, if they accept the agreement, it becomes binding on the parties. ss.69, 72(1)

This requirement for a ratification vote does not apply to a first agreement settled by the Board and to any amendment to a provision of a collective agreement made prior to the termination date, unless the agreement provides otherwise. s.69(4)

If the final offer selection process is used and an agreement is reached by the parties prior to the selector's decision, the agreed terms are deemed to have been ratified by the employees in the unit. s.94.6(1.1)

STRIKE REPLACEMENTS, REINSTATEMENT AND OTHER PROVISIONS

It is an unfair labour practice for an employer:

- to hire or offer to hire replacement workers, or threaten to do so, prior to or during a lockout or legal strike, for any period of time longer than the duration of the work stoppage;
- to refuse to reinstate an employee without a valid reason when a lockout or legal strike ends with or without a collective agreement and the work the employee was performing is continued (where there is no agreement on reinstatement, it must be done as work becomes available according to the seniority of each employee in the unit at the time the work stoppage began);
- to use, or offer or purport to use, a professional strikebreaker, or to authorize such action; a professional strikebreaker is a person not involved in a dispute, and whose primary object is to interfere with, obstruct, prevent, restrain or disrupt the exercise of any right under the Labour Relations Act in anticipation of or during a lockout or legal strike. ss.11, 12, 13, and 14

REQUIREMENTS CONCERNING LEGAL STRIKES (continued)

PREREQUISITES TO LEGAL STRIKE	STRIKE REPLACEMENTS, REINSTATEMENT AND OTHER PROVISIONS
	It is an unfair labour practice for an employer or a bargaining agent to take disciplinary action against an employee covered by a collective agreement who refuses to perform work which would directly facilitate the operation or business of another employer whose employees within Canada are legally on strike or locked out. Disputes concerning the refusal may be referred to the Board for a binding decision. An employer is not required to pay wages to an employee for any period during which he refuses to perform his work. s.15 It is an unfair labour practice for an employer to discharge or refuse to continue to employ or to re-employ, lay off, transfer, suspend, or alter the status of an employee who has refused to perform all or any of the duties or responsibilities of an employee who is on strike or locked out, unless he satisfies the Board that his decision was in no way affected by the refusal. s.16

BARGAINING AGENT

Duty of fair representation

In representing the rights of any employee under the collective agreement, the bargaining agent or its representative must not act in a manner which is arbitrary, discriminatory, or in bad faith or, in the case of a dismissal, fail to take reasonable care to represent the employee's interests. s.20

Limitations on the application of union security clauses requiring dismissal

A union or its representative may not require an employer to terminate an employee because he has been expelled or suspended from membership in the union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members as a condition of acquiring or retaining membership. s.19(b)

A provision of a collective agreement is void when it requires an employer to discharge an employee because he is or continues to be a member of another union or engages in activities on its behalf. s.23(3)

EMPLOYER

Compulsory deduction of union dues

Every collective agreement must contain a provision requiring the employer to deduct from the wages of each employee in the unit, whether or not he is a member of the union, the amount of the regular union dues and to remit the amounts to the union monthly or as provided in the agreement. Where the employee is not a member of the union, the amount deducted does not include any portion of such dues that is payable in respect of benefits available only to union members or in respect of special assessments payable by them. ss.29, 76

The Board may exempt religious objectors from being members of and financially supporting a union, so long as the amount of the regular union dues is paid to a charity agreed upon by the employee and the union or designated by it. Such religious objectors may be employed or continue to be employed notwithstanding an agreement requiring union membership as a condition of employment. ss.76, 77

TIMELINESS OF APPLICATION

No certified trade union, no agreement

At any time. s.10(2)

Certified trade union but no agreement in force

12 months after date of certification or 12 months after termination of agreement in force at the time of certification. s.10(3)

Recognized union, no agreement

12 months after the signing of the recognition agreement (unless the Board* has declared that the union was not entitled to represent the employees). s.10(4)

Agreement in force (3 years or less)

Within 2 last months of agreement. s.10(5)

Agreement in force (more than 3 years)

During the 35th and 36th months of the agreement and during the last two months of any subsequent year or of its operation. s.10(6)

Agreement in force (for further term(s))

During the last 2 months of each year of the further term or of the operation of the agreement. s. 10(7)

APPROPRIATE BARGAINING UNIT

"Unit" or "bargaining unit" means a group of employees and "appropriate for collective bargaining", with reference to a unit, means a unit that is appropriate for such purposes whether it is an employer unit, craft unit, technical unit, professional unit, plant unit, or any other unit and whether or not the employees therein are employed by one or more employers. s. 1(1)

In the agricultural industry, a unit must comprise five or more employees. s.1(5)

In determining that a unit is appropriate for collective bargaining, the Board may include or exclude employees. s.13(1)

A unit consisting solely of professionals is appropriate for collective bargaining but the Board may include members of a profession with other employees if it is satisfied that this is the wish of the majority of such members. s.1(5)

REPRESENTATION VOTE

When the Board is satisfied that not less than 40% and not more than 60% of the employees in the bargaining unit are members in good standing of the trade union, it may direct that a representation vote be taken. s. 14(2)

Certification takes place if more than 50% of the ballots of all those eligible to vote are cast in favour of the union or more than 60% in the unit are members in good standing. Employees absent from work during voting hours and who do not cast their ballots are not counted as eligible. s.14(3), (4)

When the Board is satisfied that more than 50% are members in good standing, it may certify the trade union without taking a vote. s.14(5)

A pre-hearing representation vote may be requested by a trade union, be allowed by the Board, and become valid if not less than 40% of the employees in the unit are members of the union at the time the application is made. s.15

Where employee rights under the Act have been violated so that the true wishes of the employees are unlikely to be ascertained, the Board may certify the trade union, if satisfied that it has adequate membership support, or refuse to certify if such support has been obtained by virtue of an unfair labour practice. s.106(8)(e)

The Board has the power to conduct representation votes and give such directions in connection with the vote as it deems necessary. The Board may also hold additional representation votes to determine employees' wishes. s.126(2)

DECERTIFICATION

Timeliness of application

Same as for certification. s. 23(1),(2)

In certain circumstances, the Board may allow an earlier application. An application is subject to delays related to conciliation, mediation strike or lockout. ss. 23(8), 30

The Board may refuse to entertain a new application by an unsuccessful applicant for a period not exceeding 10 months. s.126(2)

Criteria

If the Board is satisfied that at least 40% of the employees support the application, a representation vote is taken. Decertification takes place if more than 50% of the ballots of all those eligible to vote are cast against the union. Employees absent from work during voting hours and who do not cast their ballots are not counted as eligible. s. 23(3), (4), (5)

An application may be made by any employee, another trade union, or the employer if the Board is satisfied that a substantial question exists as to whether there is support from a majority of employees. s.23(1), (2), (6), (7)

Decertification may take place with or without a representation vote when there is failure to give notice to bargain, to commence bargaining or to seek to bargain within certain delays prescribed by the Act. s. 24(1), (2)

Decertification may take place at any time:

a) when there have been no employees in the bargaining unit for 2 years, or

b) when certification was obtained fraudulently (an application may be made by a concerned employee, employer or union). ss. 25, 26

* The term "Board" means the Industrial Relations Board.

TIMELINESS OF APPLICATION	APPROPRIATE BARGAINING UNIT	REPRESENTATION VOTE	DECERTIFICATION
Exceptions In certain circumstances when a collective agreement is in force, the Board may give consent to an earlier application. ss. 10(8), 33(3) In all cases, an application is subject to delays related to conciliation, mediation, strike or lockout. s. 11 ***Where application for certification rejected*** The Board may prescribe a waiting period before a new application will be considered from the same applicant. s.20			

NOTICE TO BARGAIN

No previous collective agreement

Either party may give notice to commence bargaining. s.32(1)

Prior to expiry of collective agreement

Either party may give notice to commence bargaining within the period between the 90th and the 30th day before the expiry of the agreement or such longer period as may be provided in the agreement. s.33(1), (2)

Statutory obligation

The parties must commence to bargain within 20 days after notice has been given or such further time as they may agree upon. s.34(1), (2)

Statutory freeze following notice to bargain

When no collective agreement is in operation, except with the consent of the other party, there may not be any alteration in the rates of wages, other terms or conditions of employment or any right, privilege or duty of the employer, the bargaining agent or the employees. The freeze applies until a collective agreement is entered into or is renewed, or the parties have acquired the right to strike or to lock out, or the bargaining rights have been cancelled. s.35(2)

FAILURE TO SETTLE DISPUTE

The parties may agree to submit their differences to **binding arbitration**. s.79

On request of either party or in any other case where he considers it advisable, the Minister may:

- decide not to appoint a conciliation officer or mediator.
- appoint one or more **conciliation officers** or a **mediator** (any prior conciliation officers' appointment is then terminated). ss.36,70
  - Report to Minister within 14 days (extension possible). ss.61,70
- If the dispute is not settled, within 15 days after receipt of the report or in any other case where he considers it advisable, the Minister may:
  - decide not to appoint a conciliation board.
    - No strike or lockout until 7 days after notification of such decision. s.91
  - appoint a **conciliation board**. s.36
    - Report to Minister within 14 days (extension possible). Report sent forthwith to the parties. s.68
      - The parties may agree to be bound by the conciliation board's report. s.69
    - No strike or lockout until 7 days after release of board's report. s.91
    - After 24 hours' notice to the other party, the parties are eligible to strike or to lock out when such action is supported by a vote. ss.91-97

The Minister may appoint a **mediation officer** for prevention or settlement of a dispute at any time. s.71

The Minister may appoint a mediation officer at any time. Such appointment does not affect the right to strike or to lock out except if no decision has been announced by the Minister on the appointment of a conciliation board. s.71(5)

Upon request or on his own initiative, the Minister may appoint an industrial inquiry commission and refer matters in dispute to it for inquiry and report. s.90

REQUIREMENTS CONCERNING LEGAL STRIKES

PREREQUISITES TO LEGAL STRIKE

Strike action is prohibited:

- while a collective agreement is in force, except in the case of the revision of a provision of the agreement; s.91(1), (3)
- until a party has requested the appointment of a conciliation officer; s.91(2)
- until seven days have elapsed from the date on which the Minister:

  notified the parties that he will not appoint a conciliation officer or mediator; or

  notified the parties that he will not appoint a conciliation board; or

  releases the report of a conciliation board to the parties; s.91(2)
- where the parties have agreed to be bound by the award of a conciliation board, arbitrator, or arbitration board; s.92(2)
- where the parties have agreed to be bound by the result of a vote on acceptance of the report of a conciliation board, until 7 days after the Minister has released such report and until a vote has been taken (the vote must be held within 30 days after the release of the report); s.93(1), (2)
- until the employer has been given a written 24 hours' strike notice (if the notice is not acted upon, the employer may require a further notice of up to 24 hours for the purpose of undertaking an orderly shutdown of his operations; if a strike does not occur within six hours after that notice period has elapsed, it is not allowed until a further similar notice is given); s.97(1), (4)
- after one year from the date of the strike vote or the date fixed for the return on such a vote. In this case, it is deemed that the dispute no longer exists. s.98(4), (5)

STRIKE VOTE

A mandatory secret strike vote is taken by the trade union. A strike is legal if a majority of those in the bargaining unit are in favour. s.94(1), (2), (6)

An employee is not counted as an employee in the unit if he has not been employed for the 3 months preceding the vote or did not cast a ballot because he was absent and the vote was taken on a working day otherwise than by mail. s.94(3)

Any dispute related to the vote is referred to the Board for decision. s.94(4),(5)

A strike vote may not be taken until one of the prerequisites to a legal strike mentioned in subsection 91(2) is met (see the other box on this page). s.98(2)

BARGAINING AGENT

Limitations on the application of union security clauses requiring dismissal

No trade union may require an employer to discharge an employee who has been expelled or suspended from membership or denied membership where:

a) the reason for such action is that the employee was or is a member of another union, or has engaged in activity against the union or on behalf of another trade union, or

b) the employee has been discriminated against by the union in the application of its membership rules although he is qualified to engage in the trade or work and is otherwise eligible for membership. s.8(3)

Exception

The prohibition does not apply to an employee who has engaged in unlawful activity against the trade union or whose activity against the union or on behalf of another union has been instigated, procured or supported by, or has involved participation by the employer or its representative. s.8(4)

Other limitations

No employer may discharge an employee when he has reasonable grounds for believing that union membership was not available to him on the same terms and conditions generally applicable to other members. s.8(10)

EMPLOYER

Authorization to deduct union dues

The employer must honour a written authorization for the deduction of union dues from an employee's wages. The authorization continues in effect for at least 3 months and thereafter until revoked. A revocation may be delivered or sent to the employer at any time when there is no collective agreement in operation or within two months prior to the expiry date if one is in force. s.9

TIMELINESS OF APPLICATION

No certified trade union, no agreement

At any time. s.36(2)

Certified trade union but no agreement in force or bargaining has not commenced

12 months after date of certification. The Board* may give its consent to an earlier application. s.36(3)

Agreement in force (2 years or less)

Within 2 last months of its operation. s.36(4)

Agreement in force (more than 2 years)

In the 23rd and 24th months and during the last two months of each subsequent year or of its operation. s.36(4)

Where application for certification refused

No subsequent application that is the same or substantially the same for 6 months, unless the Board gives its consent. Labour Relations Board Rules of Procedure, 1978 s.19

APPROPRIATE BARGAINING UNIT

"Unit" means a group of two or more employees determined in accordance with the Act for the purposes of collective bargaining, and "appropriate", with reference to a unit, means a unit that is appropriate for collective bargaining whether it be an employer unit, craft unit, technical unit, plant unit, or any other unit, and whether the employees therein are employed by one or more employers. s.2(1),(3)

In determining that a unit is appropriate for collective bargaining, the Board may include or exclude employees. s.37(1)

The Board may find appropriate a unit of professional employees and may include in it other persons whose work is closely related. s.39(1)

REPRESENTATION VOTE

The Board may certify if:

a) it is satisfied that the majority of the employees in the unit are members in good standing; or

b) as a result of a vote of those in the unit, it is satisfied that the trade union has the support of a majority of them; or

c) as a result of a vote of those in the unit, it is satisfied that at least 70% have voted and a majority of those voting have selected the trade union as their bargaining agent. s.37(2)

The Board may take representation votes as it deems expedient. ss.46,47(1)

The chief executive officer of the Board causes a vote to be taken if he is satisfied that not less than 40% and not more than 50% of the employees in the unit are members in good standing of the trade union. s.47(2)

Every representation vote is taken by secret ballot. s.47(3)

DECERTIFICATION

Timeliness of application

12 months after certification, 6 months after any decertification application was dismissed, or 12 months after notice to bargain was given by the bargaining agent. The Board may accept and deal with an earlier application. s.52

Criteria

On its own motion or upon application, the Board may revoke certification when, following investigation and any hearing requested by the party concerned, it has determined that the bargaining agent no longer represents the majority of employees in the unit. s.51(1)

Where the Board directs a vote of the employees, it may revoke a certification if:

a) a majority in the unit vote in favour of the revocation, or

b) at least 70% vote, and a majority of those voting are in favour of the revocation. s.51(1.1)

* The term "Board" means the Labour Relations Board.

NOTICE TO BARGAIN

No previous collective agreement

Either party may give notice to commence bargaining. s.72

Prior to the expiry of collective agreement

Notice is given by either party not more than 60 days and not less than 30 days before the expiration of the agreement or within such other period as may be provided in the agreement. s.73

Statutory obligation

Parties must commence to bargain in good faith within 20 days after notice has been given or such further time as they may agree upon. ss.74, 75

Statutory freeze following notice to bargain

An employer may not alter rates of wages or any other term or condition of employment without the consent of the bargaining agent until a collective agreement is entered into or renewed, or the parties have acquired the right to strike or to lock out. However, alterations may be made with the approval of the Board. ss.74, 75

FAILURE TO SETTLE DISPUTE

(see next page)

COLLECTIVE BARGAINING AND GOVERNMENT INTERVENTION DURING NEGOTIATIONS (continued)

Newfoundland

FAILURE TO SETTLE DISPUTE

First agreement

At the request of either party and after any investigation he considers necessary... s.80.1

the Minister asks the Board to inquire into the dispute. s.80.1

The Board decides to settle terms and conditions for a first agreement, which becomes binding on the parties for one year. ss.80.1, 80.3

The parties may by mutual agreement vary the terms and conditions. s.80.1

The Board decides not to settle the dispute. s.80.1

the Minister does not ask the Board to inquire into the dispute. s.80.1

Subsequent agreement

Upon a request for a conciliation board or at any time, the Minister may appoint a **mediator**. Any prior conciliator's appointment is terminated. s.80

Report to Minister within 14 days (extension possible). ss.80, 111

Where the parties so agree in writing, the report becomes binding. ss.80, 116

At the request of either party or on his own initiative, the Minister may appoint one or more **conciliators**. s.79

Report to Minister within 14 days (extension possible). s.102

At the request of either party, or in any other case where he considers it advisable, the Minister may appoint a **conciliation board**. ss.80, 103

Report to Minister within 14 days (extension possible). Report sent forthwith to the parties and may be made public by the Minister. ss.111, 112

7 days after the Minister receives the report... ss.94, 95

The Minister decides not to appoint a conciliation board. ss.94, 95

Where either party has requested a conciliation board, 15 days after such request or, if the Minister has deferred consideration of the request until he receives a conciliator's report, 15 days after that date... ss.94, 95, 97

the parties are eligible to strike or to lock out. ss.94, 95, 96

An employer or his agent may not threaten to shut down or move a plant, or any part thereof, in the course of a dispute, s.26

After the right to strike or to lock out is acquired, or at any other time, the Minister may appoint a conciliator or mediator, s.80(5)

Where the continuance of a strike poses a threat to an industry or region in the province, the Lieutenant-Governor in Council may order the bargaining agent to conduct a secret vote on the resumption of work, and the Minister may require that an officer of his department be present during the conduct of the vote. s.98

Upon request or on his own initiative, the Minister may appoint an industrial inquiry commission and refer matters in dispute to it for inquiry and report, s.136

REQUIREMENTS CONCERNING LEGAL STRIKES

PREREQUISITES TO LEGAL STRIKE

No strike until the bargaining agent is entitled to require the employer to commence bargaining. ss. 94,96

A trade union not entitled to bargain collectively cannot declare a strike. s. 96

Strike action is prohibited:

- while an agreement is in force, except in the case of a dispute respecting the revision of a provision of a collective agreement; s. 95
- until the parties have bargained collectively in good faith and failed to conclude an agreement; ss. 94, 95
- until 7 days after the Minister has received the report of the conciliation board; or
- until 15 days after the Minister has received a request from either party to appoint a conciliation board and no notice has been given by the Minister or he has notified the party so requesting that he will not appoint a board. Where the Minister defers consideration of such a request until after he receives the report of a conciliation officer, the period within which he must decide whether to appoint a conciliation board does not commence until the date on which he receives such report. ss.94, 95, 97

STRIKE VOTE

When the bargaining agent is entitled to require the employer to commence bargaining, a strike vote may be held only if the parties have bargained collectively in good faith and failed to reach an agreement and after certain delays relating to conciliation (see prerequisites to legal strike). s. 94

A strike vote is not mandatory.

BARGAINING AGENT

Duty of fair representation

An employee who claims to be aggrieved because his bargaining agent has failed to act in good faith in the handling of a grievance filed in accordance with any procedure established by it and to which he has not been given ready access may complain in writing to the Board. The complaint must be made within 90 days from the date on which the grievance first arose. s.126(1), (2)

Limitations on the application of union security clauses requiring dismissal

An employee who claims that he has been unfairly expelled from a trade union may make a written complaint to the Board. Following an investigation and after giving the parties concerned an opportunity to be heard, the Board may dismiss the complaint or order that the employee be reinstated in the union and may order further that the complainant be reinstated in his employment. s.30(3), (4), (5)

A provision of a collective agreement is not valid if it requires an employer to discharge an employee because he is or continues to be a member of, or engages in activities on behalf of, a union other than a specified trade union. s.32

EMPLOYER

Compulsory deduction of union dues

At the request of the bargaining agent, a collective agreement must include a provision requiring the employer to deduct an amount equal to regular union dues from the wages of affected employees, whether or not they are members of the union, and remit the amount to the union without delay. This clause does not apply to the construction industry. s.83.1

TIMELINESS OF APPLICATION

No certified trade union, no agreement

At any time s. 22(2)

Certified trade union but no agreement in force

12 months after date of certification. The Board* may give its consent to an earlier application. s. 22(3)

Agreement in force (3 years or less)

Within 3 last months of its operation. s. 22(4)

Agreement in force (more than 3 years)

During the 34th, 35th and 36th months of the agreement; during the last 3 months of each year that the agreement continues to operate after the 3rd year, or during the last 3 months of operation. s. 22(5)

Where application refused

No new application by the same applicant for a period determined by the Board. s. 24(16)

APPROPRIATE BARGAINING UNIT

"Unit" means a group of two or more employees, and "appropriate for collective bargaining", with reference to a unit, means a unit that is appropriate for such purposes whether it be an employer unit, craft unit, technical unit, plant unit, or any other unit and whether or not the employees therein are employed by one or more employers. s. 1(1)x)

The Board determines whether the unit is appropriate for collective bargaining and it may include employees in it or exclude them from it. s. 24(4)

Community of interest among the employees in such matters as work location, hours of work, working conditions, and methods of remuneration will be considered by the Board in determining the appropriate bargaining unit. s. 24(14)

Upon an application made by an employer, if the Board is satisfied that such employer is engaged in manufacturing at two or more interdependent manufacturing locations in the province, it will order that the appropriate unit is one comprising all employees at all such locations, subject only to the normal exclusions. s. 24A

An application may not be made:

a) more than one year following the commencement of production at the second manufacturing location or at an additional manufacturing location of an employer already covered by such an order of the Board; or

b) if certification or voluntary recognition has been granted with respect to one or more locations. s.24A

REPRESENTATION VOTE

A trade union claiming to have as members in good standing not less than 40% of the employees in a unit may apply for certification. s. 22(1)

The Board then takes a vote to determine the wishes of the employees concerned. Normally, the vote is conducted no more than five working days after receipt by the Board of the application and three working days after the Board's notices are received by the employer. The Board may delay the vote if it decides that investigations are required. s. 24(1), (3)

If it is satisfied that less than 40% of the employees in the unit are members in good standing, it will dismiss the application; if the percentage is 40% or more, it will conduct a vote (it may dismiss the application if misleading membership evidence is filed). s. 24(7), (11)

If the majority of the votes cast are in favour of the trade union, the Board will grant certification. It may, however, dismiss the application in case of significant contravention of the Act or regulations by the union. s. 24(8), (10)

When any contravention of the legislation by the employer results in the vote not reflecting the employees' true wishes, the Board may certify the trade union if it is satisfied that it represents at least 40% of the employees in the unit. s. 24(9)

DECERTIFICATION

Timeliness of application

If no agreement is in force, at least 12 months after certification; if an agreement is in force, same timeliness as for certification s.27

Criteria

When it is satisfied that a significant number of members of the trade union allege that such union is not adequately fulfilling its responsibilities or no longer represents a majority of the employees, the Board may upon application for revocation, order the taking of a vote to determine the wishes of the employees and may revoke or confirm the certification in accordance with the result of the vote. s.27

* The term "Board" means the Labour Relations Board.

COLLECTIVE BARGAINING AND GOVERNMENT INTERVENTION DURING NEGOTIATIONS

NOTICE TO BARGAIN

No previous collective agreement

Either party may give notice to commence bargaining. s.31

Prior to expiry of collective agreement

Either party may give notice to commence bargaining within 2 months preceding the date of expiry of the agreement. s.32

Statutory obligation

The parties must commence to bargain within 20 days after notice has been given or such further time as they may agree upon. s.33

Statutory freeze following notice to bargain

An employer may not alter rates of wages or any other term or condition of employment without the consent of the bargaining agent or the Board until a new collective agreement is concluded or the parties have acquired the right to strike or to lock out. s.33

FAILURE TO SETTLE DISPUTE

At the request of either party or on his own initiative, the Minister may appoint a **conciliator**. s.35

Report to Minister within 14 days (extension possible). The conciliator notifies the parties that he has submitted his report. s.36

The Minister may appoint a **mediator** at any time. s.38

With the permission of the Minister, the mediator makes a report which is deemed to be a conciliator's report. s.38

14 days after the report is sent to the Minister... s.45

If a conciliator or mediator is unsuccessful, both parties jointly or severally, may request a **conciliation board** within 14 days after the Minister receives the report. s.37

Report to Minister within 14 days (extension possible). Report sent forthwith to the parties and may be made public by the Minister. ss.66, 67

If the parties so agree, the recommendations become binding. s.70

7 days after the Minister receives the report... s.45

after 48 hours' notice to the Minister... s.45

the parties are eligible to strike or to lock out when such action is supported by a vote. s.45

The Minister may appoint a mediator at any time. s.38

Upon request or on his own initiative, the Minister may appoint an industrial inquiry commission and refer matters in dispute to it for inquiry and report. ss.71-73

REQUIREMENTS CONCERNING LEGAL STRIKES

PREREQUISITES TO LEGAL STRIKE

No strike is permitted until:

- the trade union is entitled to require the employer to bargain; s. 45(1)
- the parties have bargained collectively and have failed to conclude an agreement; s.45(1)
- either a conciliator has been appointed and 14 days have elapsed since he has made his report or a conciliation board has been established and 7 days have elapsed since the Minister has received its report (no strike may occur more than 6 months after the expiration of either of these delays unless either party has thereafter requested conciliation services and the times have again expired); s. 45(1), (2)
- 48 hours after a strike notice has been received by the Minister. s. 45(3)

No strike is permitted where:

- an agreement is in force, except respecting a dispute arising with reference to a provision expressly subject to revision during the term of the agreement; s. 46
- a vote of both employers and employees is in favour of the acceptance of the report of a conciliation board. s. 47(1)

STRIKE VOTE

No strike may be declared until a vote by secret ballot of the employees in the unit affected is taken and the majority of the employees concerned vote in favour of the strike. s. 45(3)

PROTECTION FOR STRIKERS AND NON-STRIKING EMPLOYEES

An employer is prohibited from refusing to employ or to continue to employ or from discriminating against any person in regard to employment or any term or condition of employment because the person has participated in a legal strike. s. 51(3)(a)

An employer is prohibited from suspending, disciplining, discharging, or otherwise penalizing an employee by reason of his refusal to perform all or some of the duties and responsibilities of another employee participating in a strike. s. 51(3)(c)

CERTAIN OBLIGATIONS AND PROHIBITIONS APPLYING TO THE PARTIES

BARGAINING AGENT

Limitations on the application of union security clauses requiring dismissal

A trade union or its representative may not require an employer to terminate an employee because he has been expelled or suspended from membership in the trade union for a reason other than a failure to pay the periodic dues, assessments, and initiation fees uniformly required to be paid by all members as a condition of acquiring or retaining membership. s. 52(e)

A provision of a collective agreement is not valid when it requires an employer to discharge an employee because he is or continues to be a member of another trade union or engages in activities on its behalf. s.57(2)

EMPLOYER

Authorization to deduct union dues

The employer must honour a written authorization for the deduction of wages for the payment of initiation fees and union dues. Unless a collective agreement provides otherwise, an authorization continues in force for at least 3 months and thereafter until revoked. s. 58(2), (5)

LABOUR RELATIONS ACT (R.S.O. 1980, c.228, as amended)

CERTIFICATION OF TRADE UNIONS

Ontario

TIMELINESS OF APPLICATION

No certified trade union, no agreement

At any time. s.5(1)

Certified trade union but no agreement

12 months after date of certification. s.5(2)

Voluntarily recognized trade union but no agreement

Where the bargaining rights have not been terminated, 12 months after the recognition agreement is entered into. s.5(3)

Agreement in force (3 years or less)

Within the 2 last months of its operation. s.5(4)

Agreement in force (more than 3 years)

During the 35th and 36th months of operation, during the last 2 months of each year that the agreement continues to operate, or during the last 2 months of operation. s.5(5)

Agreement in force (for further term(s))

During the last 2 months of each year of the further term(s) or of the operation of the agreement. s.5(6)

In all cases

Application is subject to delays related to conciliation, mediation, strike, or lockout. s.61.

APPROPRIATE BARGAINING UNIT

"Bargaining unit" means a unit of employees appropriate for collective bargaining, whether it is an employer unit or a plant unit or a subdivision of either of them. s.1(1)

The Board* determines the appropriateness of units, and a unit must consist of more than one employee. s.6(1)

The Board may certify a trade union pending the final resolution of a dispute concerning the composition of the unit. s.6(2)

A group of employees who exercise technical skills or who are members of a craft and, as such, are distinguishable from other employees is considered by the Board to be a unit appropriate for collective bargaining if certain conditions are met. Persons commonly associated in their work and bargaining may be included in the unit. s.6(3)

A unit consisting solely of professional engineers or dependent contractors is considered to be appropriate but, if a majority so wish, the Board may include other employees. s.6(4), (5)

Security guards may not be included in a bargaining unit with other employees. s.12

REPRESENTATION VOTE

If the Board is satisfied that not less than 45% and not more than 55% of the employees in the bargaining unit are members of the trade union, it must direct that a representation vote be taken. The Board may do so when it is satisfied that more than 55% belong to the union. s.7(2)

The Board will certify the trade union if more than 50% of the ballots taken in a vote are cast in its favour and, in other cases, when it is satisfied that more than 55% are members of such union. s.7(3)

When the true wishes of the employees are not likely to be ascertained because of a contravention of the Act by the employer, the Board may certify the trade union if it is of the opinion that such union has adequate membership support. s.8

A pre-hearing representation vote may be requested by a trade union, be allowed by the Board, and become valid if not less than 35% of the employees in the unit are members of the union at the time the application is made. s.9

The Board has the power to conduct representation votes and give such directions in connection with the vote as it deems necessary. The Board may also hold additional representation votes to determine employees' wishes. s.103(2), (5)

DECERTIFICATION

Timeliness of application

Same as for certification. s.57(1), (2)

Criteria

Upon application by any of the employees, the Board must ascertain that not less than 45% of the employees in the bargaining unit have voluntarily signified in writing that they no longer wish to be represented by the trade union. If so, a representation vote is taken. ss.57(3), 103(2)

Decertification takes place when more than 50% of the ballots are cast in opposition to the trade union. s.57(4)

A certificate obtained by fraud may be revoked at any time by a declaration of the Board. s.58

Upon application by an employer or any employees, decertification may take place with or without a representation vote when there is failure to give notice to bargain, to commence bargaining or to seek to bargain within certain delays prescribed by the Act. s.59

First collective agreement

Where the Board orders a settlement, no application may be considered until after the agreement is settled (timeliness is the same as if there was a negotiated agreement). s.40.a(23)

* The term "Board" means the Labour Relations Board.

TIMELINESS OF APPLICATION	APPROPRIATE BARGAINING UNIT	REPRESENTATION VOTE	DECERTIFICATION
Where application refused The Board may bar an unsuccessful applicant for a period not exceeding 10 months s.103(2)(i) ***First collective agreement*** Where the Board orders a settlement, no application may be considered until after the agreement is settled (timeliness is the same as if there was a negotiated agreement). s 40.a(24)			

NOTICE TO BARGAIN

No previous collective agreement

Following certification, the trade union must give notice to commence bargaining. s.14

Prior to expiry of collective agreement

Either party may give notice to commence bargaining within 90 days before the expiry of the agreement or in accordance with provisions in the agreement relating to termination or renewal. s.53(1), (2)

Statutory obligation

The parties must meet within 15 days from the giving of the notice, or within such further period as they may agree upon, and must bargain in good faith. ss.15, 54

Statutory freeze following notice to bargain

When no collective agreement is in operation, except with the consent of the other party, there may not be any alteration in the rates of wages, other terms or conditions of employment or any right, privilege or duty of the employer, the bargaining agent or the employees. The freeze applies until the parties have acquired the right to strike or to lock out, or the bargaining rights have been cancelled. s.79(1)

FAILURE TO SETTLE DISPUTE

(see next page)

FAILURE TO SETTLE DISPUTE

Either party may request that the Minister appoint a **conciliator** s.16

Report to the Minister within 14 days (extension possible). s.18

If conciliator is unsuccessful, the Minister shall:

decide not to establish a conciliation board. s.19(b)

establish a **conciliation board**. s.19(a)

Report to the Minister within 30 days (extension possible). s.32

14 days after notification of this decision... s.72(2)(b)

subject to delivery delay: by hand, one day; by mail, two days... s.113(3)

7 days after the report is released to the parties... s.72(2)(a)

the parties are eligible to strike or to lock out s.72

The Minister may, on the joint request of the parties, appoint a **mediator** selected by them. Any prior conciliator's appointment is terminated. s.17

Report to the Minister within 30 days (extension possible). s.33

The parties may agree to submit their dispute to **binding arbitration**. s.38

First agreement

Either party may apply to the Board for a settlement. The Board makes its decision within 30 days. If certain attitudes of the employer or bargaining agent are found to have caused an impasse, the Board directs the settlement of the dispute. s.40a (1), (2)

The Board orders the settlement of the dispute by a board of arbitration. The Board arbitrates itself when requested by both parties within 7 days. s.40a.(3)

The Board decides not to direct the settlement of the dispute.

The Minister may appoint a mediator. Matters in dispute are submitted to arbitration. A settled agreement is effective for 2 years. s.40a.(12), (17), (18)

At any time after the conciliation procedures have been exhausted, either the employer or the trade union may apply to the Conciliation and Mediation Services Branch of the Ministry of Labour for the appointment of a mediator. Such appointment has no effect on the ability to strike or to lock out.

The Minister may appoint an industrial inquiry commission and refer matters in dispute to it for inquiry and report. s.35

After the commencement of a strike, the Minister may direct a vote of the employees in the bargaining unit on the employer's last offer. s.39

Before or after the commencement of a strike, the employer may make one request for a vote of the employees in the unit on his last offer and the Minister will order such a vote. s.40

The Minister may appoint a disputes advisory committee to assist the parties at any time during bargaining, either before or after a strike or lockout, where it appears that conciliation and mediation procedures have been exhausted. s.37

REQUIREMENTS CONCERNING LEGAL STRIKES

PREREQUISITES TO LEGAL STRIKE

Strike action is prohibited:

- where the Board has ordered the settlement of a first collective agreement by arbitration; s.40.a(13)
- while a collective agreement is in operation; s.72(1)
- until the Minister has appointed a conciliator or a mediator; and
- until 7 days after the Minister has released to the parties the report of a conciliation board or mediator (this is subject to delivery delay); or
- until 14 days after the Minister has released to the parties a notice that he does not consider it advisable to appoint a conciliation board. This is subject to delivery delay. ss.72(2), 113(3)

STRIKE VOTE

A strike vote is not mandatory.

A strike vote or a ratification vote taken by a trade union must be by secret ballot. All employees in the bargaining unit are entitled to participate in a strike or ratification vote and must have ample opportunity to do so. s.72(4), (5), (6)

STRIKE REPLACEMENTS, REINSTATEMENT AND OTHER PROVISIONS

Where the Board directs the settlement of a first collective agreement by arbitration, employees affected by a strike or lockout must be reinstated in accordance with an agreement between the parties or on the basis of length of service, except as may be directed by the Board for the purpose of allowing the resumption of normal operations. This requirement applies regardless of the presence of replacement employees but does not apply where, because of the permanent discontinuance of all or part of his business, the employer no longer has persons engaged in performing work of the same or a similar nature to work which the employee performed before the work stoppage. s. 40.a(13),(14)

No person, employer, employers' organization, or person acting on their behalf may retain the services of a professional strikebreaker, and no one may act as such. A "professional strikebreaker" is a person not involved in a dispute whose primary object, in the Board's opinion, is to interfere with, obstruct, prevent, restrain, or disrupt the exercise of any right under the Act in anticipation of, or during, a legal strike or lockout. s.71a

Where an employee engaging in a legal strike makes an unconditional application in writing to his employer, within 6 months from the commencement of the strike, to return to work, the employer must reinstate the employee in his former employment unless he no longer has persons engaged in performing work of the same or similar nature or the operations concerned have been suspended or discontinued for a valid reason. Discrimination is prohibited in offering terms of employment to such an employee, when such discrimination is based on the exercise of a legal right. s.73

BARGAINING AGENT

Duty of fair representation

A trade union representing employees in a bargaining unit is prohibited from acting in a manner that is arbitrary, discriminatory, or in bad faith in the representation of any employee in the unit, whether or not such person is a member of the trade union. s.68

Operation of hiring halls

Where, pursuant to a collective agreement, a trade union is engaged in the selection, referral, assignment, designation, or scheduling of persons to employment, it may not act in a manner that is arbitrary, discriminatory, or in bad faith. s.69

Limitations on the application of union security clauses requiring dismissal

A trade union may not require an employer to discharge an employee because he has been expelled or suspended from membership in the trade union or such membership has been denied or withheld because of a discriminatory application of membership rules or due to certain actions of the employee (i.e., membership in another trade union, activity against the trade union or on behalf of another trade union, reasonable dissent, or refusal to pay unreasonable fees, dues or other assessments). s.46(2)

The prohibition does not apply to an employee who has engaged in unlawful activity against a trade union or whose activity against it or on behalf of another trade union has been instigated by management or has involved its participation or support. s.46(3)

EMPLOYER

Compulsory deduction of union dues

Except in the construction industry, upon a request from the trade union, there must be included in the collective agreement a provision requiring the employer to deduct from the wages of each employee in the unit, whether or not he is a member of the union, the amount of the regular union dues and to remit that amount to the trade union without delay. s.43(1)

The Board may exempt religious objectors from such a provision or a requirement to belong to a trade union as a condition of employment as long as the amounts of any initiation fees, dues, or other assessments are paid to a charity. The charity is mutually agreed upon by the employee and the union; failing an agreement, a registered charitable organization may be designated by the Board. s.47(1)

The exemption from a provision of a collective agreement requiring membership in a trade union as a condition of employment, or the payment of dues to a trade union, applies to those employed at the time the agreement is first entered into and only during the term of such agreement. It does not apply to employees whose employment commences after the signing of the collective agreement. s.47(2)

TIMELINESS OF APPLICATION

No certified trade union, no agreement

At any time. s. 11(2)

Certified trade union but no agreement

10 months after certification; the Board* may consent to an earlier application. s. 11(3)

Trade union and expired agreement

When notice to bargain has been given, 10 months after the expiration of the agreement; the Board may consent to an earlier application. s. 11(7)

Agreement in force (2 years or less)

During the 2 last months of operation. s. 11(4)

Agreement in force (more than 2 years)

During the 23rd and 24th months of the term, during the last 2 months of each subsequent year or during the last 2 months of operation. s. 11(5)

Agreement in force (for further term(s))

During the last 2 months of each year of the further term or of the operation of the agreement. s. 11(6)

Where strike or lockout in effect

No application may be made without the consent of the Board. s. 11(8)

Where application refused

The Board may prescribe a waiting period before a new application may be made by the same applicant. s. 12(7)

APPROPRIATE BARGAINING UNIT

"Unit" means a group of employees whether it is an employer unit or a plant unit or a subdivision of either. s.7(1)(n)

The Board may include or exclude employees in order to make a unit appropriate for collective bargaining or for other good reason. s.12(2)

REPRESENTATION VOTE

Whenever it deems it necessary, the Board will take a representation vote. s.12(3)

The Board will certify the trade union when satisfied that a majority of the employees in the unit wish it to be their bargaining agent. s.12(5)

The representative character may be determined by a vote in favour of the union by a majority of eligible employees in the unit who exercise their right to vote. s.12(4), (8)

A pre-hearing representation vote may be requested by a trade union, be allowed by the Board, and become valid. s.13

DECERTIFICATION

Timeliness of application

Same as for certification. s. 19(4)

Criteria

An employer, a concerned trade union, or any employee may apply to the Board for the revocation of certification on the ground that the union has lost the support of the majority. s.19(1)

If the Board is satisfied that the majority of the employees in a unit no longer wish the trade union to represent them, it will revoke the certification. s.19(2)

Whenever it deems it necessary, the Board will take a vote. ss.12(3), 19(4)

* The term "Board" means the Labour Relations Board.

NOTICE TO BARGAIN

No previous collective agreement

Either party may give notice to commence bargaining. s.20

Prior to expiry of collective agreement

Either party may give notice to commence bargaining within the time prescribed by the agreement or, if not specified, at least 2 months before the expiry date. s.22

Statutory obligation

The parties must commence to bargain within 20 days after notice has been given or such further time as they may agree upon. ss.21, 23

Statutory freeze following notice to bargain

An employer may not alter rates of wages or any other term or condition of employment without the consent of the bargaining agent until a collective agreement is entered into or is renewed, or the parties have acquired the right to strike or to lock out. ss.21(b), 23(b)

FAILURE TO SETTLE DISPUTE

At the request of either party or on his own initiative, the Minister may appoint a **conciliator**, who arranges a meeting of the parties forthwith. s.24

The conciliator must report to the Minister within 10 days of his first meeting with the parties (extension possible). s.25

The Minister may appoint a **conciliation board**. s.26

The Minister may appoint a **mediator**. s.33

The Minister does not appoint a conciliation board or mediator; 14 days after the Minister receives the conciliator's report... s.40

The parties may agree to be bound by the board's or mediator's recommendations. ss.32,33

Report to Minister within 14 days (extension possible). Report sent forthwith to the parties and may be made public by the Minister. s.31

7 days after the Minister receives the report... s.40

the parties are eligible to strike or to lock out when such action is supported by a vote. s.40

The Minister may appoint an industrial inquiry commission and refer matters in dispute to it for inquiry and report. s.41

REQUIREMENTS CONCERNING LEGAL STRIKES

PREREQUISITES TO LEGAL STRIKE

No strike during the term of an agreement, except if it contains a reopener clause for renegotiation of wages. ss.35, 40(3)

No strike until the parties have bargained collectively and:

a) until 14 days after the report of the conciliator was filed with the Minister and a conciliation board or mediator has not been appointed or,

b) until 7 days after the report of the conciliation board or mediator was filed with the Minister. s.40(3)

STRIKE VOTE

No strike is permitted until after a vote has been taken by secret ballot of the employees in the unit affected as to whether to strike and the majority of the employees voting is in favour. Such a vote may not be taken until the prerequisites to a legal strike have been met. s.40(4)

STRIKE REPLACEMENTS, REINSTATEMENT AND OTHER PROVISIONS

Upon the termination of a legal strike or lockout, the employees affected are entitled to be reinstated in their employment without discrimination according to the terms and conditions of employment then in force. s.8(2.1)

This requirement does not apply where, due to a decline in business, the operations or the functions (including similar work) performed by the employees before the work stoppage, have been suspended or discontinued. Should those operations be resumed, the employees who were on strike or locked out must be reinstated first. s.8(2.2)

The employment of replacement employees is deemed to be terminated at the end of the strike or lockout, subject only to the terms and conditions of any return to work agreement. s.8(2.3)

CERTAIN OBLIGATIONS AND PROHIBITIONS APPLYING TO THE PARTIES

BARGAINING AGENT

Limitations on the application of union security clauses requiring dismissal

No bargaining agent may require an employer to discharge an employee for non-membership in such trade union if membership is not available to the employee on the same terms and conditions generally applicable to other members. s.8(6)

EMPLOYER

Authorization to deduct union dues

Where there is no check-off provision in a collective agreement, the employer must make the deduction of initiation fees and dues if the bargaining agent makes application to the Minister for the taking of a vote in respect of such deductions and a majority of the employees in the unit are in favour and if each individual employee signs a written request to that effect. Such request may not be revoked within six months from the date it is made. s.44

TIMELINESS OF APPLICATION

No certified trade union

At any time if there is no other application concerning all or some of the employees. s.22(a)

First filing rule: the first filing of a petition for certification, regarding non-unionized employees, renders inadmissible any similar petition filed in the days following. s.27.1

Certified trade union but no agreement

6 months after the right to strike or to lock out is acquired, where the dispute has not been submitted to arbitration and no legal strike or lockout is in progress. s.22(c)

Agreement in force

From the 90th to the 60th day before the date of expiration of the agreement or of its renewal or the expiration of an arbitration award replacing an agreement. s.22(d)

Where application refused or withdrawn

No renewal of application for 3 months, unless the petition is not admissible because of the first filing rule or the withdrawal occurs following a merger of school or municipal corporations, an integration of personnel within an urban community, or the establishment of a transit commission. s.40

APPROPRIATE BARGAINING UNIT

The right to be certified applies to all the employees of an employer or to employees who constitute a separate group according to an agreement between the employer and an association of employees, ascertained by a certification agent, or according to the decision of a labour commissioner. s.21

A single employee may form such a group except in farming operations, where the minimum requirement is 3 ordinarily and continuously employed persons. s.21

A labour commissioner has the power to settle, after an investigation, any matter relating to the bargaining unit and the persons contemplated by it and may for that purpose modify the unit proposed by the petitioning association. ss.28(d), 32,39

REPRESENTATION VOTE

An application for certification is made to the labour commissioner-general (within the Department of Labour) and is referred to a certification agent or a labour commissioner. ss.24,25

If the parties agree on the bargaining unit (even if there is some disagreement as to the inclusion of certain employees), the certification agent will certify the employee association when he is satisfied it is representative (i.e., absolute majority). ss.21,28

If the certification agent determines that 35% to 50% of the employees in the unit are members of the association, he will hold a ballot and certify it if it obtains the absolute majority of those having the right to vote. ss.21, 28(b)

A labour commissioner is appointed instead of a certification agent in the following circumstances:

- there is already a certified association;
- there is more than one association applying for certification;
- the certification agent believes that there is interference on the part of the employer with the employees' association, or a complaint has been filed in this respect;
- certification has not been granted by the certification agent because of the lack of representative character or a disagreement of the parties on the bargaining unit. ss.28(e), 31

DECERTIFICATION

Timeliness of application

Same as for certification. s.41

Criteria

A labour commissioner may cancel the certification:

a) if the association has ceased to exist, or

b) if it no longer represents a majority of the group for which it was certified.

An employer may request a labour commissioner to examine these 2 criteria. s.41

The Labour Court may order the dissolution of an association if it is proven that it is dominated or financed by the employer or his representative. The association has an opportunity to be heard and to attempt to prove that it is blameless. s.149

*Not included in this summary are amendments adopted in December 1987 (Bill 30) which, on this date, are not in force.

TIMELINESS OF APPLICATION	APPROPRIATE BARGAINING UNIT	REPRESENTATION VOTE	DECERTIFICATION
Failure to file agreement with the office of the labour commissioner-general An application for certification may be made by another association 60 days after the signing of a collective agreement or of any amendment thereto until such agreement or amendment has been filed. s.72		A labour commissioner decides whether the petitioning association is representative after investigating the question in any manner he thinks advisable, including by calculating membership or holding a vote by secret ballot. s.32. A labour commissioner must order a vote by secret ballot when an association has as members 35% to 50% of the employees in the unit. Only the association(s) comprising each not fewer than 35% of the employees and the certified association, if any, may compete for election. This requirement for a vote does not apply when one of the associations has the absolute majority of the employees. s.37 Where a vote involves more than 2 associations which, together, obtain an absolute majority of the votes of eligible employees, without any having an absolute majority, the labour commissioner orders a new vote by secret ballot excluding the association with the fewest votes. s.37.1 Where a vote involves 2 associations, the labour commissioner certifies the one which has obtained more votes if they, together, obtain an absolute majority of the votes of eligible employees. s.37.1	

NOTICE TO BARGAIN

No previous collective agreement

Either party must give to the other party at least eight days' written notice of the time and place its representatives will be ready to meet. s.52

Prior to expiry of collective agreement

A notice of meeting may be given by either party within 90 days preceding expiration, unless another delay is provided in the agreement. s.52

Copy to Minister

The party who gives a notice of meeting must send a copy thereof to the Minister on the same day. The latter immediately informs the parties of the date of receipt. s.52.1

Statutory obligation

After a notice of meeting has been given, negotiations must begin and be carried on diligently and in good faith. s.53

Statutory freeze after certification or the termination of a collective agreement

No employer may change the conditions of employment of his employees without the written consent of the bargaining agent. The freeze applies until the right to lock out is acquired or an arbitration award is handed down. s.59

During the freeze, it is forbidden to advise or enjoin employees not to continue furnishing their services under the same conditions of employment. s.60

FAILURE TO SETTLE DISPUTE

Upon written application to the Minister by both parties, a dispute is submitted to an **arbitrator** whose decision is final and binding. The parties may, however, agree to amend the award. ss.58, 74, 92, 93

At the request of either party or on his own initiative, the Minister appoints a **conciliator**. ss.54, 55

Report to Minister if he so requests. s.57

Upon written request of either party:

The Minister submits the dispute to an arbitrator. ss.93.1, 93.2, 93.3

If he believes that a settlement is unlikely within a reasonable time, the arbitrator informs the parties and the Minister that he will determine the content of the first agreement. s.93.4

The award (min. 1 year, max. 2 years) is binding on the parties, which may agree to amend its content. s.93.9

The Minister does not submit the dispute to an arbitrator. ss.93.1, 93.2, 93.3

First agreement

90 days after the Minister has received a copy of the notice to bargain (if no notice has been given, it is deemed to have been given at the expiry of the agreement or arbitral award, or 90 days after certification)... s.58

the parties are eligible to strike or to lock out when such action is supported by a vote. ss.20.2, 58

The Act respecting the Ministère du Travail gives the Minister of Labour the power to appoint a special mediator at any time. s.15

REQUIREMENTS CONCERNING LEGAL STRIKES

PREREQUISITES TO LEGAL STRIKE

Strike action is prohibited:

- until 90 days after reception by the Minister of a copy of the notice to commence bargaining (if no notice has been given, it is deemed to have been given at the expiry of the agreement or arbitral award made in lieu of it, or 90 days after certification); s.58
- from the time an arbitrator informs the parties that he will determine the content of a first agreement; s.93.5
- if an employee association has not been certified; s.106
- during the period of a collective agreement, except where such agreement has a clause permitting the revision thereof by the parties and the conditions for a legal strike have been observed. s.107

Remarks

Following a petition for certification or for reconsideration or cancellation of certification, the labour commissioner concerned may order the suspension of negotiations and of the delay for exercising the right to strike. s.42

The employee association must notify the Minister in writing within 48 hours following the declaration of a strike and indicate the number of employees in the bargaining unit. s.58.1

Limitation on the right to strike in public services

Among others, "public services" include municipalities; intermunicipal agencies; telephone services; fixed-schedule land transport such as a railway or subway; transport by bus or boat; gas, water or electric utilities; home garbage removal; and ambulance services. s.111.0.16

Essential services

On the recommendation of the Minister, the Government, if of the opinion that a strike in a public service might endanger the public health or safety, may, by order, require an employer and a certified association to maintain essential services in the event of a strike. Such order must be made not later than 15 days before the certified association concerned acquires the right to strike. The parties must then negotiate and forward their agreement on essential services to the Conseil des services essentiels (Essential Services Council). If no agreement is reached, the certified association must send to the employer and to the Council a list of the essential services that must be maintained. This list may not be amended thereafter, except at the request of the Council. ss.111.0.17, 111.0.18

STRIKE VOTE

No strike may be declared unless it has been authorized by secret ballot decided by a majority vote of the members of the certified employee association who are in the bargaining unit and who exercise their right to vote. The employee association must inform its members of the taking of the vote at least 48 hours in advance. It must also notify the Minister in writing within 48 hours after the vote if the result is in favour of the strike. s.20.2

Remark re: ratification vote

A collective agreement may not be signed until it has been authorized by secret ballot decided by the majority of the members of the certified association in the unit who exercise their right to vote. s.20.3

PROHIBITIONS REGARDING STRIKEBREAKERS

An employer is prohibited from using the services of replacement employees in an establishment affected by a legal strike or a lockout. The types of persons covered by the prohibition are as follows:

a) persons hired between the day negotiations begin and the end of the strike or lockout;

b) employees of other employers and subcontractors;

c) members of the bargaining unit involved (unless an agreement has been reached by the parties; in designated public services, unless the trade union has submitted a list of essential services to be maintained or the Government has suspended the right to strike because of insufficient essential services);

d) persons employed by the employer in another establishment;

e) persons who are not employees under the Code (managers, foremen, etc.) that the employer employs in another establishment (unless employees of that establishment belong to the unit involved in the work stoppage);

f) employees in the establishment who do not belong to the bargaining unit on strike or locked out. s.109.1

PREREQUISITES TO LEGAL STRIKE

Where, following any recommendations that it may make to amend the agreement or list, the Council considers that the services provided for therein are insufficient or are not rendered during a strike, it must make a report to the Minister and inform the public of its content. ss.111.0.19, 111.0.20, 111.0.21

Strike notice

In addition to the prerequisites to a legal strike mentioned above, a certified association in a public service must give a written strike notice of at least 7 juridical days to the Minister and the employer, and also to the Council when an order has been made regarding the essential services to be maintained. Such notice may be renewed only after the day indicated as the time of the beginning of the strike. In the case of a public service for which an order has been made, no strike may be declared unless, at least 7 days before its beginning, an agreement or list regarding essential services has been forwarded to the Council (and also to the employer in the case of a list). s.111.0.23

Suspension of the right to strike

If it is of the opinion that the essential services provided for or actually rendered where a strike is apprehended or in progress are insufficient and that it endangers public health or safety, the Government, on the recommendation of the Minister, may suspend the right to strike in a public service for which an order has been made regarding maintenance of those services. The suspension has effect until it is proved to the Government that, where the right to strike is exercised, essential services will be sufficiently maintained in that public service. s.111.0.24

A lockout is prohibited in a public service contemplated by an order regarding the maintaining of essential services. s.111.0.26

Remedial powers

Where a lockout, a strike, a slowdown, or another concerted action contrary to law affects or is likely to affect the provision of a service to which the public is entitled or, where the essential services prescribed in a list or agreement are not provided during a strike, the Council is empowered to intervene to make an inquiry, attempt to bring the parties to reach a settlement of the conflict and, if necessary, order the parties to implement the remedial measures required in the circumstances. ss.111.16, 111.17, 111.18

PROHIBITIONS REGARDING STRIKEBREAKERS

In addition, an employer is prohibited from using, in another of his establishments, the services of an employee who is a member of the unit on strike or locked out. s.109.1

Employers are exempted from the anti-strikebreaking provisions to the extent necessary to ensure compliance with a violated agreement, list, or order pertaining to essential services (see item c) above). s.109.2

Employers are not prevented from taking necessary measures to avoid the destruction or serious deterioration of property, as long as those measures are for conservation and are not designed to enable production of goods or continuation of services, which would not otherwise be permitted. s.109.3

Upon application, the Minister may dispatch an investigator to ascertain whether the provisions mentioned above are being complied with. The investigator makes a report to the Minister and sends a copy of the report to the parties. s.109.4

At the end of a strike or lockout, any affected employee is entitled to recover his employment by priority over any other person, unless the employer can produce a good and sufficient reason for not recalling such employee. Any disagreement between the employer and the certified association relating to the non-recall of an employee must be submitted to arbitration as if it were a grievance within 6 months from the date when employment should have been recovered. s.110.1

BARGAINING AGENT

Duty of fair representation

A certified association is prohibited from acting in bad faith or in an arbitrary or discriminatory manner or showing serious negligence in respect of employees in the bargaining unit it represents. s.47.2

If an employee who has been the subject of a dismissal or of a disciplinary sanction believes that the association does not represent him fairly, he may submit a written complaint to the Minister of Labour within six months. If a complaint is made, the Minister appoints an investigator who endeavours to settle it. If no settlement is reached within 30 days of the appointment of the investigator, or if the association does not carry out the agreement, the employee may, within the following 15 days, request the Labour Court to refer his claim to arbitration. If the Court authorizes arbitration, the association pays the employee's costs. ss.47.3, 47.4 and 47.5

Limitations on the application of union security clauses requiring dismissal

A collective agreement is not binding on an employer regarding the dismissal of an employee for the sole reason that his union membership has been refused, deferred, suspended, or cancelled, except in the following cases:

a) the employee has been hired contrary to a provision of the agreement;

b) the employee has participated, at the instigation or with the direct or indirect assistance of management, in an activity against the certified association. s.63

EMPLOYER

Compulsory deduction of union dues

An employer must withhold from the salary of every employee who is a member of a certified association, or who is included in the represented bargaining unit, the amount stated as an assessment by such association. s.47

TIMELINESS OF APPLICATION

Certified trade union but no agreement in force

Not less than 30 days or more than 60 days before the anniversary date of certification. s. 5(k) (ii)

Agreement in force

Not less than 30 days or more than 60 days before the anniversary of the effective date of the agreement. ss. 5(k)(i), 33(5)

Where application refused

No subsequent application that is the same or substantially the same before 6 months unless the Board* abridges that period. s. 5(b)

APPROPRIATE BARGAINING UNIT

The Board may make an order determining whether the appropriate unit of employees for the purpose of bargaining collectively shall be an employer unit, craft unit, plant unit, a subdivision thereof, or some other unit. s. 5(a)

REPRESENTATION VOTE

In determining what trade union, if any, represents a majority of employees in an appropriate unit, the Board may, at its discretion, direct that a vote be taken by secret ballot of all employees eligible to vote. s. 6(1)

The Board orders such a vote where:

a) an order exists determining that another trade union represents the majority of employees in the unit; and

b) 25% or more of the employees in the unit have within 6 months preceding the date of application indicated that the applicant union is their choice as representative for the purpose of collective bargaining.

It may, however, refuse to hold the vote if satisfied that another trade union represents a clear majority of the employees in the unit or when it has taken a vote, within six months, upon an application by the same union regarding the same unit. s. 6(2)

Votes ordered by the Board are by secret ballot and conducted under its supervision. s. 7(1)

In a vote, if a majority of those eligible to vote cast ballots, a majority of the voting employees determines the trade union that represents the employees. s. 8

DECERTIFICATION

The Board may rescind an order determining that a trade union represents a majority of employees in an appropriate unit if:

a) there is an agreement in existence, upon application during a period of not less than 30 days or more than 60 days before the anniversary of the effective date of the agreement;

b) there is no agreement and an application is made during a period of not less than 30 days or more than 60 days before the anniversary date of the order to be rescinded or amended; or

c) the Board is satisfied that the order was obtained by fraud (it then rescinds the order). ss. 5(k), 16

* The term "Board" means the Labour Relations Board.

NOTICE TO BARGAIN

Prior to expiry of collective agreement

Either party may give notice not less than 30 days or more than 60 days before the expiry date of the agreement. s.33(4)

Statutory obligation

Where notice is given, the parties must forthwith bargain collectively in good faith. ss. 2(b), 33(4)

Statutory freeze when no collective agreement is in force or during conciliation

No employer may change rates of wages, hours of work, conditions or tenure of employment, benefits or privileges until collective bargaining has taken place respecting the change (unless the trade union concerned has not been certified), and until any conciliation board has submitted its report. s.11(1)(j),(m), (3), (4)

FAILURE TO SETTLE DISPUTE

The parties may submit a dispute to the **Labour Relations Board**. s.24

The finding of the Board is final and binding on the parties. s.24

No conciliation board is established.

At the request of either party or both of them or on his own initiative, the Minister decides to establish a **conciliation board**. ss.22, 23, Sask. Reg. 20/67: s.2

The board reports to the Minister within 14 days (extension possible). Sask. Reg. 20/67: ss.11, 16

Report to be sent forthwith to the parties to accept or reject. It is available for publication. Sask. Reg. 20/67: ss.13, 14

If the parties agree in writing, the board's recommendation becomes binding. Sask. Reg. 20/67: s.15

After 48 hours' notice to the other party... s.11

the parties are eligible to strike or to lock out when such action is supported by a vote. s.11

It is an unfair labour practice for an employer, his agent, etc., to threaten to shut down or move a plant, etc., in the course of a dispute. s.11(1)(i)

When a strike has continued for 30 days, the trade union, the employer, or employees involved in the strike (representing at least 100 or 25% of those in the unit) may apply to the Board for a vote to be conducted among the striking employees to determine whether a majority of those voting, whose ballots are not spoiled, are in favour of the employer's final offer. Every affected employee who has not secured permanent employment elsewhere is entitled to vote. Such vote is held at the discretion of the Board and may be ordered only once for any strike. s.45

REQUIREMENTS CONCERNING LEGAL STRIKES

PREREQUISITES TO LEGAL STRIKE

Strike action is prohibited:

- while an application is pending before the Board or any matter is pending before a board of conciliation appointed under the Act; s.11(2)(b)
- during the term of a collective agreement. s.44(2)

Strike notice

The trade union must give the employer or his agent at least 48 hours' written notice of the date and time the strike will commence. It must, promptly thereafter, serve a similar notice to the Minister or his representative. s.11(6)

Strikes during the period of an election

The Labour-Management Dispute (Temporary Provisions) Act gives the Lieutenant Governor in Council the power to prohibit a strike during an election where, in his opinion, a labour-management dispute creates a situation of pressing public importance or endangers (or may endanger) the health or safety of any person in the province. s.14

STRIKE VOTE

It is an unfair labour practice for an employee, a trade union, or any other person to declare, authorize, or take part in a strike unless a strike vote has been taken by secret ballot among all employees in the unit affected by the collective bargaining and a majority of those voting have voted in favour of a strike. No strike vote by secret ballot is required in a bargaining unit of 2 employees or less. s.11(2)(d)

Upon application by the employer, trade union, or affected employees, the Board may decide to supervise, conduct, or scrutinize a strike or ratification vote or a vote on the employer's final offer. ss.11(8) and 45(2)

CERTAIN OBLIGATIONS AND PROHIBITIONS APPLYING TO THE PARTIES

BARGAINING AGENT

Duty of fair representation

Every employee has the right to be fairly represented in grievance arbitration proceedings by the trade union certified to represent the bargaining unit, in a manner that is not arbitrary, discriminatory, or in bad faith. s.25.1

Limitations on the application of union security clauses requiring dismissal

A trade union or any person is prohibited from seeking to have an employee discharged for failure to acquire or maintain membership in a trade union, where such membership is a condition of employment and the employee tenders payment of the periodic dues, assessments, and initiation fees uniformly required as a condition of acquiring and maintaining membership. Such employee is then deemed to maintain his membership in the trade union. ss.11(2)(e), 36(3)

EMPLOYER

Compulsory deduction of union dues

Upon the request of a union representing a majority of employees in a bargaining unit, a collective agreement must contain a clause compelling every employee who is or becomes a member of the union to maintain his membership in the union as a condition of employment and every new employee to join the union within 30 days after the commencement of his employment. s. 36(1)

Non-union members of the bargaining unit are required, as a condition of employment, to tender to the union the periodic dues uniformly required to be paid by members of the union. s. 36(1)

Upon a written application of an employee and upon request of a union representing the majority of employees, the employer must deduct union dues, assessments, and initiation fees from the employees' wages and periodically remit these to the union. s. 32(1)

The Board may issue an order excluding from the bargaining unit an employee who objects to membership in or financial support of a union as a matter of conscience based on religious training or belief. This excluded employee must pay to a charity mutually agreed upon by the employee and the union or designated by the Board if no agreement is reached an amount at least equal to the amount of dues and assessments payable by union members. s.5(l)

TECHNOLOGICAL CHANGE

PROVISIONS

(January 1, 1990)

TECHNOLOGICAL CHANGE LEGISLATION IN CANADA

In view of the impact that technological changes have on job content and employment security, several jurisdictions in Canada - the federal jurisdiction, British Columbia, Manitoba, New Brunswick, and Saskatchewan - have adopted provisions relating to them in their general collective bargaining statutes.

In the federal jurisdiction, the railway "run throughs" of the early 1960s are regarded as the catalyst which led to the adoption of the legislation. The "run throughs" were so named because of the replacement of steam driven locomotives by diesels which did not require as many stopping points to refuel or undergo servicing. This entailed significant changes in the terms and conditions of railway employment as well as the disappearance of certain types of jobs. The ensuing Freedman Industrial Inquiry Commission on the introduction of technological change in the railway industry held that the matter of trains running through terminals (and, by implication, other situations involving technological change adversely affecting employees in their working conditions) should be subject to negotiations. In 1972, technological change provisions were incorporated into the Canada Labour Code and, at about the same time, similar legislation was passed in British Columbia, Manitoba, and Saskatchewan. In New Brunswick, the technological change legislation is recent; it was adopted in 1989.

The legislation adopted in New Brunswick differs from the technological change provisions existing at the federal level, and in British Columbia, Manitoba, and Saskatchewan. In the latter jurisdictions, the provisions are generally applicable during the period when a collective agreement is in force. They provide for a mechanism that a bargaining agent can use to open an otherwise closed agreement so that negotiations can be held on the introduction of a technological change in the workplace. In New Brunswick, the legislation applies during the negotiations taking place prior to the signing of a collective agreement. It requires that all agreements contain provisions on technological change, or provide for an advantage or obligation replacing such provisions. Following is a more detailed examination of the legislation existing in those jurisdictions.

FEDERAL, BRITISH COLUMBIA, MANITOBA, AND SASKATCHEWAN

In British Columbia, the legislation requires that every collective agreement contain provisions for settling, without stoppage of work, by arbitration or other method, all disputes relating to adjustment to technological change during the term of the agreement. It also provides that if a collective agreement does not contain provisions for adjustment to technological change, the Minister responsible for labour may appoint someone to investigate the matter, and may order provisions for that purpose which are deemed to be part of the collective agreement.

In addition to the legislation just described, British Columbia requires a notice of technological change and, if the terms of a collective agreement are not sufficient to deal with the effects of a technological change, the law provides for a procedure permitting the opening of the agreement, and negotiations over the effects resulting from the change. These provisions, as well as similar legislation at the federal level and in Manitoba, and Saskatchewan are described below.

Coverage

The workers covered by the technological change provisions in these jurisdictions are those who negotiate work contracts through a bargaining agent; however, there are situations where the legislation will not apply, such as when a notice of technological change has been given by the employer before a collective agreement is signed (the delays vary) or when the agreement contains adequate provisions pertaining to the change.

Definition of technological change

In the four jurisdictions, there are similarities and differences in the way the term "technological change" has been defined. Following are three paragraphs that can be found in those definitions.

Technological change is:

1) the introduction by an employer into his work, undertaking or business of equipment or material of a different nature or kind than that previously utilized by him in the operation of the work, undertaking or business;

2) a change in the manner in which the employer carries on the work, undertaking or business that is directly related to the introduction of that equipment or material;

3) the removal by an employer of any part of his work, undertaking or business.

Wording identical or very close to paragraphs 1 and 2 is found in the definition of "technological change" contained in the Canada Labour Code and the legislation of British Columbia, Manitoba, and Saskatchewan. However, in the federal jurisdiction and Manitoba, both conditions described in these paragraphs must be present for the definition to be met. Also, with respect to paragraph 2, British Columbia does not use the word "directly".

Paragraph 3 is found only in the Saskatchewan legislation and has the effect of broadening its definition.

In British Columbia, it is specified that "technological change" does not include normal layoffs resulting from a decrease in the amount of work to be done.

Technological changes requiring a notice

In the four jurisdictions, a written notice to the bargaining agent is required if an employer proposes to effect a technological change that is likely to affect the terms and conditions or security of employment of a significant number of his employees covered by a collective agreement. In Manitoba, the application of the legislation is potentially broadened by the fact that a notice is also required where a technological change is likely to alter significantly the basis upon which the collective agreement was negotiated. In Saskatchewan, the notice must also be given to the Minister responsible for labour.

Length of technological change notice

When required, the notice of technological change to a bargaining agent is longer under federal jurisdiction than in the provinces. Since 1984, the Canada Labour Code has provided for a notice of at least 120 days, while the legislation of British Columbia, Manitoba, and Saskatchewan provides for at least 90 days.

Content of notice

Under the federal legislation and that of British Columbia, Manitoba, and Saskatchewan, a notice of technological change must provide such information as the nature of the change, the date on which it is to be implemented, the approximate number and type of employees likely to be affected, and, except for British Columbia, the effect it is likely to have on the terms and conditions or security of employment of those affected.

In the federal jurisdiction, on request from the bargaining agent, the employer is also required to provide a statement in writing setting out a detailed description of the nature of the proposed technological change, the names of the employees who are likely to be affected initially, and the rationale for the change.

Alleged failure to give appropriate notice

In the four jurisdictions, a bargaining agent may apply to the labour relations board (federal and Saskatchewan) or to an arbitration board (British Columbia and Manitoba) in order to obtain a determination as to whether the legislation does apply to a particular situation.

The labour relations boards and arbitration boards have similar remedial powers, which allow them to specify a period (not exceeding the minimum period of notice that should have been given) that must elapse before the employer may proceed with a technological change and to order the reinstatement of any displaced employee and the reimbursement of lost wages.

In most cases, a determination that there has been a failure to give appropriate notice is deemed to be the notice of technological change that the employer is required to give.

Opening of collective agreement

Where a bargaining agent has received notice of technological change or such notice is deemed to have been given, in the federal jurisdiction and British Columbia, it can apply to the Canada Labour Relations Board (CLRB) or an arbitration board, respectively, for the right to serve a notice to bargain on the employer in relation to the technological change; in Manitoba and Saskatchewan, the bargaining agent may serve notice to bargain without further reference to a labour relations or arbitration board. In reaching a conclusion on an application in the federal jurisdiction, the CLRB is required to satisfy itself that the change in question would likely "substantially and adversely affect the terms and conditions or security of employment of a significant number of employees" who are covered by the agreement concerned. (Leave is granted automatically where the CLRB has determined that there has been a failure on the part of the employer to give appropriate notice.) In British Columbia, the arbitration board must have the written consent of the Minister responsible for labour before ordering the beginning of negotiations.

Once permission to bargain is given or this right is acquired under the law, the general prohibition against strikes and lockouts during the course of a collective agreement is lifted, provided the conditions for legal strikes or lockouts are met. In Manitoba, unless it is revised, the collective agreement is deemed to terminate 90 days after notice to bargain is given or on the expiry date if it is earlier.

The federal legislation specifies that the technological change may not be put into effect until an agreement is reached or the right to strike or to lock out is acquired. In Saskatchewan, an employer may not implement such change until an agreement is reached or the Minister is informed of the failure of the parties to reach an agreement.

NEW BRUNSWICK

In New Brunswick, the legislation provides that every collective agreement, entered into or renewed on or after April 1, 1989, or still in effect two years after that date, must contain provisions concerning technological change. Among other things, these provisions define

technological change, require the employer to give reasonable advance notice of technological change to the bargaining agent, and describe the contents of the notice. If the parties are unable to agree upon the provisions to be included in the agreement regarding technological change, either party may give notice in writing to the other party that their differences are submitted to arbitration for a final and binding settlement, without stoppage of work. The parties to an agreement may opt out of these provisions by expressly stating in their collective agreement that a benefit, privilege, right or obligation was agreed to in lieu of the application of the technological change legislation. It is specified that this legislation does not apply to the construction industry

CONCLUSION

With the adoption of the technological change provisions at the federal level and in British Columbia, Manitoba, and Saskatchewan, many observers believed that this legislation would be frequently invoked by trade unions whose members are adversely affected by technological innovations. In fact, this expectation did not materialize. In the four jurisdictions, technological change issues are generally handled in collective bargaining rather than through the triggering of the legislative provisions.

Negotiations over technological change questions also occur in the jurisdictions where there are no specific technological change provisions in the collective bargaining statute.

As mentioned previously, in New Brunswick, negotiations must take place to determine the content of technological change provisions that must be included in collective agreements. If the negotiations fail, and the parties do not opt out of the legislation by replacing the technological change provisions with a particular benefit, privilege, right or obligation, one of the parties may submit the dispute to binding arbitration. New Brunswick is the only jurisdiction providing for this settlement procedure during negotiations over technological change questions.